

# SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1965

No. 118

FEDERAL TRADE COMMISSION, PETITIONER,

vs.

BROWN SHOE COMPANY, INC.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF  
APPEALS FOR THE EIGHTH CIRCUIT

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**BEFORE FEDERAL TRADE COMMISSION**

Docket No. 7606

In the Matter of BROWN SHOE COMPANY, A CORPORATION

COMPLAINT—Issued by the Federal Trade Commission on  
October 13, 1959

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that the party respondent named in the caption hereof, and hereinafter more particularly designated and described has violated the provisions of Section 5 of said Act (U. S. C., Title 15, Section 45), and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, the Commission hereby issues its complaint, stating its charges as follows:

**Count I**

Paragraph One: Respondent, Brown Shoe Company, sometimes hereinafter referred to as "Brown", is a corporation organized under the laws of the State of New York with its office and principal place of business located at 8300 Maryland Avenue, St. Louis, Missouri.

Paragraph Two: Brown is an integrated company operating at all levels of the shoe industry. Prior to 1950, it was primarily engaged in the manufacture and distribution of shoes at the wholesale level. Since 1951, through the acquisition of retail shoe stores Brown has become a substantial and large retailer of shoes. Brown owns and operates 48 factories and warehouses in 41 different cities located in seven states. Brown's total sales of \$236,946,078 for its fiscal year ending October 31, 1957, make it the world's second largest manufacturer and seller of shoes.

Brown's shoes are marketed by three separate methods or plans: (1) through independent retail shoe stores which have entered a franchise agreement with Brown or one of [fol. 4] its divisions or subsidiaries; (2) through wholesale sales to independent shoe stores, chains and mail order

houses; and (3) through approximately one thousand company-owned retail stores.

Brown's shoes are sold under a wide variety of trade names. The Kinney and Regal brands are sold only through Brown owned retail stores bearing those names. Brown shoes for men are trade named Educator, Pedwin, Roblee, Stuart Holmes, and Style-Craft. Brown shoes for women are marketed under the trade names Air Step, Connie, Educator, Glamour Debs, Jacqueline, Life Stride, Marquise, Naturalizer, Natural Poise, Paris Fashion, Revette, and Risque. The Brown manufactured children's shoes bear the names Buster Brown, Educator, Official Boy Scout, Official Girl Scout, Propr-bilt, and Robin Hood. All of the Brown shoes retail in the medium price field. In addition, shoes are sold to retail chain and mail order houses for resale under the private brand names of the customers.

Paragraph Three: The shoes manufactured or distributed by Brown have been, and are being, sold by Brown through its divisions and subsidiaries to purchasers located throughout the several States of the United States, the territories thereof, and in the District of Columbia. The respondent causes said shoes to be transported and shipped from the various places of manufacture to purchasers thereof who are located in states other than the state where said shoes were manufactured, and there has been and is now a constant and continuous current and flow of said shoes in interstate commerce. Respondent, therefore, is engaged in commerce, as "commerce" is defined in the Federal Trade Commission Act.

Paragraph Four: Except to the extent that competition has been hindered, frustrated, and lessened as set forth in this complaint, respondent has been and is now in substantial competition with other corporations, individuals and partnerships engaged in the manufacture, sale and distribution of shoes in "commerce" as that term is defined in the Federal Trade Commission Act.

Paragraph Five: In the course and conduct of its business in commerce, Brown, through its Brown Franchise Stores division, has been and is now engaged in unfair [fol. 5] methods of competition and unfair acts or practices in that it has entered into contracts or franchises with a substantial number of its independent retail shoe store

operator customers which require said customers to restrict their purchases of shoes for resale to the Brown lines and which prohibit them from purchasing, stocking or reselling shoes manufactured by competitors of Brown. Customers who have entered into such agreements or franchises with Brown are termed "Brown Franchise Stores", and are afforded special treatment and given certain benefits, hereinafter described, which are not granted to the Brown customers who do not enter into such agreements or franchises.

Paragraph Six: At the present time, there are approximately 650 Brown Franchise Stores located in forty-seven of the states of the United States. Total sales by Brown to the Brown Franchise Stores in Brown's fiscal year ending October 31, 1957, were \$21,724,564.00.

Brown Franchise Stores are, for the most part, "family type" stores selling a complete line of shoes to fit every member of the family. They are mostly located in the towns and smaller cities and only one Franchise Store is appointed in each town or small city.

Paragraph Seven: Among the valuable benefits or services received by Brown Franchise Stores from, or through, Brown are free signs, business forms and accounting assistance participation in lower cost group fire, public liability, robbery, and life insurance policies; and special, below list prices on U. S. Rubber Company canvas and waterproof footwear.

As consideration for the above-enumerated services, the Brown Franchise Store is required to concentrate its purchasing to the grades and price lines of shoes sold by Brown and to refrain from stocking and selling the shoes of competitors of Brown. The Standard Brown Franchise agreement provides that the franchisees will:

"1. Concentrate my business within the grades and price lines of shoes representing Brown Shoe Company Franchises of the Brown Division and will have no lines conflicting with Brown Division Brands of the Brown Shoe Company."

[fol. 6] Paragraph Eight: Dealers who violate the above-described agreement, by buying and stocking shoes manufactured and sold by competitors of Brown, are dropped

from the Franchise program and are deprived of the hereinbefore-described valuable benefits attendant thereto. Acting on instruction from Brown, the insurance companies which write the Brown-sponsored, term group fire, public liability, robbery and life insurance policies covering Brown Franchise Stores, refuse to renew the policies of recalcitrant dealers. Also acting on instructions from Brown, the United States Rubber Company charges recalcitrant dealers higher prices for canvas and waterproof footwear. Furthermore, Brown itself withdraws and refuses to grant to dealers dropped from the Franchise program, the free signs, business forms, accounting assistance and other services and benefits granted to dealers under the Franchise program.

Paragraph Nine: The purpose, intent or effect of the aforesaid methods, acts and practices of the respondent has been, is, or may be, substantially to lessen, hinder, restrain and suppress competition in the purchase and sale of shoes in interstate commerce; to cause a substantial number of retail shoe dealers to refrain from, or discontinue, buying and handling shoes of competitors of Brown; to exclude, or to tend to exclude, competitors of Brown from selling shoes to a substantial number of retail shoe dealers; to foreclose competitors of Brown from a substantial share of the retail dealer market in many trade areas; to appropriate to Brown the exclusive right to supply substantially the entire purchased shoe requirements of a substantial number of retail shoe dealers; and to enhance further the dominant position of Brown in the shoe industry and thereby to tend to create a monopoly in Brown in the purchase and sale of shoes in interstate commerce.

## Count II

Paragraph Ten: Paragraphs One through Four of Count I are hereby incorporated by reference and made a part of this charge as fully and with the same effect as though here again set forth verbatim.

Paragraph Eleven: Through its sales divisions and subsidiaries, Brown sells its branded shoes to more than [fol. 7] fifteen thousand independent retail shoe stores located in each of the states of the United States and in the District of Columbia.



In many trade areas throughout the country, the independent retail shoe store customers of Brown compete with each other or with Brown owned retail stores in the resale to the public of Brown manufactured shoes.

Paragraph Twelve: In the course and conduct of its business of selling branded shoes to independent retail shoe stores, Brown has been, and is now, engaged in unfair methods of competition and unfair acts or practices in commerce, in that it forces and requires or attempts to force and require its retail shoe store operator customers to agree to maintain arbitrary, non-competitive resale consumer prices fixed and promulgated by Brown.

Paragraph Thirteen: Brown regularly publishes and distributes to its retail shoe store operator customers price lists or catalog sheets which contain the consumer prices to be observed by said customers.

Frequently Brown publishes said consumer prices in full page advertisements in magazines having national circulation.

Through its representatives and officials, Brown maintains continuous pressure upon its retail shoe store operator customers to insure that they do not depart from or sell below the minimum resale prices fixed by Brown. Customers who do advertise or sell at prices below the agreed minimum are immediately contacted by a Brown representative, who is instructed to secure the operator's adherence to the fixed minimum prices by persuasion, but if that fails, to threaten and inform the customer that Brown will discontinue doing business with it.

Paragraph Fourteen: By means of the aforesaid unlawful agreements, which respondent enforces or attempts to enforce by coercion and threats, plus the distribution of the aforesaid price lists and the publication of prices in national magazines, Brown has illegally fixed, controlled and maintained, or attempted to fix, control and maintain, the prices at which shoes manufactured and distributed by it are resold to consumers.

[fol. 8] Paragraph Fifteen: The acts and practices of Brown as alleged in Counts I and II of this complaint are all to the prejudice of competitors of Brown and to the public; have a tendency to hinder and prevent, and have actually hindered and prevented, competition in the pur-



chase and sale of shoes in commerce; have a tendency to obstruct and restrain, and have actually obstructed and restrained such commerce in shoes; and constitute unfair methods of competition and unfair acts and practices in commerce within the intent and meaning and in violation of Section 5 of the Federal Trade Commission Act.

Wherefore, the Premises Considered, the Federal Trade Commission, on this 13th day of October, A. D., 1959, issues its complaint against said respondent.

#### NOTICE

Notice is hereby given to the respondent hereinbefore named that the 15th day of December, A. D., 1959, at 10 o'clock is hereby fixed as the time and St. Louis, Missouri, as the place when and where a hearing will be had before a hearing examiner of the Federal Trade Commission, on the charges set forth in this complaint, at which time and place you will have the right under said Act to appear and show cause why an order should not be entered requiring you to cease and desist from the violations of law charged in this complaint.

You are notified that the opportunity is afforded you to file with the Commission an answer to this complaint on or before the thirtieth (30th) day after service of it upon you. Such answer shall contain a concise statement of the facts constituting the ground of defense and a specific admission, denial or explanation of each fact alleged in the complaint or, if respondent is without knowledge thereof, a statement to that effect.

If respondent elects not to contest the allegations of fact set forth in the complaint, the answer shall consist of a statement that respondent admits all material allegations to be true. Such an answer shall constitute a waiver of hearing as to facts so alleged, and an initial decision containing appropriate findings and conclusions and an appropriate order disposing of the proceeding shall be [fol. 9] issued by the hearing examiner. In such answer respondent may, however, reserve the right to submit proposed findings and conclusions and the right to appeal under Section 3.22 of the Commission's Rules of Practice for Adjudicative Proceedings.

If any respondent elects to negotiate a consent order, it shall be done in accordance with Section 3.25 of the Commission's Rules of Practice.

Failure to file answer within the time above provided, and failure to appear at the time and place fixed for hearing, shall be deemed to authorize a hearing examiner, without further notice to respondent, to find the facts to be as alleged in the complaint, to conduct a hearing to determine the form of order, and, thereafter, to enter an initial decision containing such findings and order.

In Witness Whereof, the Federal Trade Commission has caused this, its complaint, to be signed by its Secretary and its official seal to be hereto affixed at Washington, D. C., this 13th day of October, A. D. 1959.

By the Commission.

Robert M. Parrish, Secretary.

(Seal)

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BEFORE THE FEDERAL TRADE COMMISSION

ANSWER OF RESPONDENT BROWN SHOE COMPANY, INC.—  
Filed November 20, 1959.

Comes now the Respondent, Brown Shoe Company, Inc. (designated in the Complaint as Brown Shoe Company), by its undersigned attorneys, and, reserving specifically all objections it may have to the jurisdiction of the Federal Trade Commission over the subject matter of the Complaint, states as follows:

Answering the first unnumbered paragraph of the Complaint, it Denies that the Federal Trade Commission has reason to believe that the Respondent has violated the provisions of Section 5 of the Federal Trade Commission [fol. 10] Act (U. S. C., Title 15, Section 45), and Denies that a proceeding by it in respect thereof would be in the public interest.

### Answer to Count I

One: It Admits the allegations in Paragraph One of Count I of the Complaint, except that it States that its corporate name is Brown Shoe Company, Inc., and that its office and principal place of business is in St. Louis County, Missouri.

Two: It Denies each and every allegation in the first subparagraph of Paragraph Two of Count I of the Complaint contained, except that it Admits that prior to 1950 it was primarily engaged in the manufacture and distribution of shoes at the wholesale level, and States that since 1950 it has been and now is primarily engaged in the manufacture and distribution of shoes at the wholesale level; that it has not been and is not now engaged in the retailing of shoes, although certain of its wholly owned subsidiary corporations are retailers of shoes; that it owns and operates thirty-four (34) factories and four (4) warehouses and supply plants in thirty-five (35) different cities located in six (6) States; its wholly owned subsidiary corporations owning and operating five (5) factories and three (3) warehouses; and that the total sales figure of \$236,946,078 for the fiscal year ended October 31, 1957, as set forth in the Complaint, is, in fact, a consolidated figure representing total sales of Brown and all of its subsidiary corporations, both at wholesale and at retail, not only of shoes but also of other articles, for the said fiscal year.

It Denies each and every allegation in the second subparagraph of Paragraph Two contained, except that it Admits that its shoes are marketed (1) by sales at wholesale to independent retail shoe stores, the owners of which have entered into a franchise agreement with it, or which are operating on the so-called "Brown Franchise Program" without the execution of a franchise agreement; (2) by sales at wholesale to independent shoe stores, chains and mail order houses, and States that, in addition, its shoes are marketed by sales at wholesale to other types of customers.

[fol. 11] It Denies each and every allegation in the third subparagraph of Paragraph Two contained, except that it Admits that certain of the men's shoes manufactured by it and marketed under its brand or trade names are marketed under the brand or trade names "Pedwin"

and "Roblee"; that certain of the women's shoes manufactured by it and marketed under its brand or trade names are marketed under the brand or trade names "Air Step", "Life Stride", "Naturalizer" and "Risque"; that certain of the children's shoes manufactured by it and marketed under its brand or trade names are marketed under the brand or trade names of "Buster Brown", "Robin Hood" and "Propr-Bilt"; that certain of the boys' shoes manufactured by it and marketed under its brand or trade names are marketed under the brand or trade name of "Buster Brown"; that certain of the girls' shoes manufactured by it and marketed under its brand or trade names are marketed under the brand or trade names of "Glamor Debs", "Robinettes" and "Robin Hood"; that it has a non-exclusive license to manufacture and sell, and does manufacture and sell, children's, boys' and men's shoes bearing the name "Official Boy Scout" and girls' shoes bearing the name "Official Girl Scout"; that all of the shoes so manufactured and marketed by Brown under said brand or trade names retail in the medium price field, and that it also manufactures shoes which are sold to certain retail stores, chain stores, mail order houses and wholesalers for resale under the private brand names of such customers.

Three: It Admits the allegations in Paragraph Three of Count I of the Complaint, except that it Denies that it causes any shoes manufactured or sold by its subsidiaries to be transported and shipped as therein alleged.

Four: It Admits the allegations in Paragraph Four of Count I of the Complaint, except that it Denies that competition has been hindered, frustrated and lessened, as set forth in the Complaint, and that it is engaged in the distribution of shoes at retail.

Five: It Denies each and every allegation in Paragraph Five of Count I contained, except that it Admits it has entered into contracts or franchises with approximately two [fol. 12] hundred fifty-nine (259) of its independent retail store operator customers, which stores are termed "Brown Franchise Stores", a copy of which contract or franchise, identified as Exhibit "A", is attached hereto and made a part hereof, to which reference is hereby made for information with respect to the rights, privileges and obligations of the parties thereto; and that approximately four hundred

twenty-three (423) of its independent retail shoe store operator customers are operating stores termed "Brown Franchise Stores" on the so-called "Brown Franchise Program", but have signed no such contract, and States that such independent retail shoe store operator customers operating such Brown Franchise Stores in individually varying degrees accept the different rights and privileges and perform the different obligations set forth in such contracts or franchises or implicit in such Program.

Six: It Admits each and every allegation in Paragraph Six of Count I of the Complaint contained, except that it States that there are approximately six hundred eighty-two (682) Brown Franchise Stores, that the line of shoes sold by such stores is only approximately "complete", that such stores are mostly located in towns or cities with populations of from 5,000 to 30,000, and that there are some instances in which more than one franchise store has been located in such communities.

Seven: It Denies each and every allegation in Paragraph Seven of Count I of the Complaint contained, except that it refers to Exhibit "A" hereto for an accurate description of the services which the owners of Brown Franchise Stores are entitled to receive from or through it; it Admits that the said Agreement contains the provision quoted in the second subparagraph of said Paragraph Seven of the Complaint; and it States that the operators of such Brown Franchise Stores in individually varying degrees accept the benefits and perform the obligations contained in such franchise agreements or implicit in such Program.

Eight: It Admits that it refuses to grant to dealers who are dropped or voluntarily withdraw from the Brown Franchise Program additional merchandising records, the [fol. 13] services of a field representative, and the right to participate in group insurance purchasing, national and regional meetings, and group purchasing (of rubber footwear), as in said Exhibit "A" provided, and that, having been advised by it that the operator of a Brown Franchise Store has voluntarily withdrawn or been dropped from the Program, the insurance companies which write the group fire, public liability, robbery, safe burglary, business interruption and life insurance policies covering the owners of Brown Franchise Stores refuse to renew the policies of

such dealer; States that it is without knowledge as to whether or not the United States Rubber Company charges dealers who voluntarily withdraw or are dropped from the franchise program higher prices for canvas or waterproof footwear, and hence Denies the allegation with respect thereto, and Denies each and every other allegation in Paragraph Eight of Count I of the Complaint contained.

Nine: It Denies each and every allegation, conclusion and assumption in Paragraph Nine of said Count I of the Complaint contained.

It Denies each and every allegation and conclusion in Paragraph Fifteen of the Complaint contained.

Wherefore, Respondent respectfully prays that Count I of the Complaint be dismissed.

#### Answer to Count II

Ten: For answer to Paragraph Ten of Count II of the Complaint, it repeats the admissions, denials and allegations contained in Paragraphs One through Four of its foregoing Answer to Count I of said Complaint, and incorporates the same by reference in this Answer to Count II as if set forth herein in haec verba.

Eleven: It Admits that through its sales divisions it sells its branded shoes to approximately 6,000 independent retail shoe customers located in each of the States of the United States and in the District of Columbia, and that some of such independent retail shoe customers may compete with each other in the resale to the public of shoes manufactured and so sold by it, but Denies each and every [fol. 14] other allegation in Paragraph Eleven of Count II of the Complaint contained.

Twelve: It Denies each and every allegation in Paragraph Twelve of Count II of the Complaint contained.

Thirteen: It Admits that it regularly distributes to its retail shoe customers price lists or catalog sheets, certain of which contain suggested retail selling prices; that on occasions it publishes suggested retail selling prices in full page advertisements in magazines having national circulation, but Denies each and every other allegation in Paragraph Thirteen of Count II of the Complaint contained.



Fourteen: It Denies each and every allegation in Paragraph Fourteen of Count II of the Complaint contained.

Fifteen: It Denies each and every allegation and conclusion in Paragraph Fifteen of the Complaint contained.

Wherefore, Respondent respectfully prays that Count II of the Complaint be dismissed.

Brown Shoe Company, Inc., By /s/ R. H. McRoberts, /s/ Gaylord C. Burke, /s/ Edwin S. Taylor, Its Attorneys, 1630 Boatmen's Bank Building, St. Louis 2, Missouri.

Bryan, Cave, McPheeters & McRoberts, Of Counsel.

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EXHIBIT A TO ANSWER

Franchise Agreement

BFS

I desire to affiliate my business with the Brown Franchise Stores' Program. Upon acceptance, as indicated by your signature affixed hereto, I will expect the company to provide the following:

[fol. 15] A Franchise for my retail shoe business for the following nationally advertised Brown Division Brands of Brown Shoe Company:

.....  
 .....  
 .....  
 .....

In addition, any or all of the following services which my business may require:

A. Architectural Plans.

An efficient and attractive arrangement and design drawn expressly for the location, complete with specifications as prepared by your Store Planning Department.

## **B. Service of a Field Representative.**

The Brown Franchise Stores Division's Field Representative will call on my store and advise on merchandising, sales promotion, personnel, accounting, record systems and other matters pertinent to a profitable shoe business.

## **C. Merchandising Records.**

This includes: a Kardex-type Merchandise Record System (a charge for binders only); a Perpetual Size Sheet System for men's, women's and children's shoes; and an Open-To-Buy and Sales Plan System.

## **D. Retail Sales Training Program.**

This program will be conducted by the Field Representative in the store.

## **E. Accounting System.**

The system devised by Brown Shoe Company for a retail shoe business which gives complete information concerning the status of my business at all times.

## **F. Group Insurance Purchasing.**

Participation in Fire, Public Liability, Robbery, Safe Burglary, Business Interruption and Life Insurance Group Insurance Policies.

## **[fol. 16] G. National and Regional Meetings.**

Provided for the exchange of information on operation techniques and current economic conditions related to the retail shoe business.

## **H. Group Purchasing.**

Participation in purchasing of rubber footwear and display material.

In return I will:

1. Concentrate my business within the grades and price lines of shoes representing Brown Shoe Company Franchises of the Brown Division and will have



no lines conflicting with Brown Division Brands of the Brown Shoe Company.

2. Operate a modern, attractive store at all times, staffed by efficient personnel and backed by adequate capital. Provide for local advertising budget based on the minimum of 3% of my annual anticipated sales and will promote and merchandise aggressively to secure maximum volume.

3. Carry full insurance on the stock and fixtures, preferably through Brown Shoe Company. If insurance is purchased locally, Brown Shoe Company will be notified.

4. Maintain and use Merchandise Record System.

5. Use and keep current the complete accounting and bookkeeping system as provided by Brown Shoe Company, make regular Monthly Reports and permit records to be audited at the discretion of Brown Shoe Company. Copies of Monthly Reports will be sent to the Field Representative and the Brown Franchise Stores Division in St. Louis for the information, analysis and suggestions.

6. Not encumber the stock or fixtures by chattel mortgage or otherwise, nor enter into any lease without previously advising the Franchise Stores Division of Brown Shoe Company.

7. Upon termination of this Agreement for any reason, not thereafter use or have the right to use any [fols. 17-18] Brown Franchise Store identification or the trade marks or trade names of those Franchise lines which were revoked upon such termination. In addition, the Franchise Stores Accounting and Merchandising Systems and forms, as well as all other supplies and services mentioned above, will no longer be supplied.

I further understand that this relationship may be cancelled by either party upon its giving 30 days written notice to that effect to the other party.

.....	.....
(Date)	(Name of Firm or Corporation)
Field Representative:	Doing Business as:
.....	.....
	(Store Name)
Approved:	.....
Brown Shoe Company	(Street Address)
By: .....	.....
	(City and State)
	.....
	(Signature of Member of Firm or Corp.)

[fol. 19] BEFORE THE FEDERAL TRADE COMMISSION

INITIAL DECISION—January 22, 1962

Edward Creel, Hearing Examiner.

James P. Timony, Counsel Supporting the Complaint.

Bryan, Cave, McPheeters & McRoberts, St. Louis, Missouri, by R. H. McRoberts, Gaylord C. Burke and Edwin S. Taylor, for the Respondent.

The Federal Trade Commission issued its complaint against the respondent on October 13, 1959, charging that it has entered into contracts or franchises with a substantial number of its independent retail shoe store operator customers which require these customers to restrict their purchases of shoes for resale to the respondent's lines and which prohibit them from purchasing, stocking or reselling shoes manufactured by competitors of respondent; and in a separate count, charging that it forces and requires, or at-

tempts to force and require, its retail shoe store operator customers to agree to maintain arbitrary, non-competitive resale consumer prices fixed and promulgated by respondent. The complaint charged that these practices, alleged in [fol. 20] both counts of the complaint, constituted unfair methods of competition and unfair acts and practices in violation of Section 5 of the Federal Trade Commission Act. Respondent's answer denied generally the allegations of the complaint, although minor factual allegations were admitted.

This proceeding is before the hearing examiner for final consideration upon the complaint, answer, testimony and other evidence, and proposed findings of fact and conclusions filed by counsel for respondent and by counsel supporting the complaint and oral argument thereon. At the close of the presentation of the Commission's case, respondent moved for dismissal of the charges on the grounds that a prima facie case had not been established. The hearing examiner elected to defer ruling upon this motion until the close of all the evidence in the case. The hearing examiner now hereby denies the motion to dismiss the complaint. Consideration has been given to the proposed findings of fact and conclusions submitted by both parties, and all proposed findings of fact and conclusions not hereinafter specifically found or concluded are rejected, and the hearing examiner, having considered the entire record herein, makes the following findings as to the facts, conclusions drawn therefrom, and issues the following order:

### Findings as to the Facts

#### Count I

1. Brown Shoe Company, Inc., (referred to in the complaint as Brown Shoe Company; hereinafter sometimes referred to as "respondent" and as "Brown") is a New York corporation with its office and principal place of business at 8300 Maryland Avenue, St. Louis County, Missouri.

2. Respondent has among its wholly owned subsidiaries G. R. Kinney Corp., Regal Shoe Company, Wohl Shoe

Company, Bourbeuse Shoe Company, and Moench Tanning Company, Inc.

Respondent is primarily engaged in the manufacture and distribution of a broad line of medium-priced, nationally advertised shoes for men, women, and children. These shoes [fol. 21] are marketed principally by sales at wholesale to independent retail shoe store customers. In 1959, respondent was actively selling to approximately 6,000 independent retail shoe stores.

Respondent and its subsidiaries have over fifty manufacturing plants, tanneries and warehouses in ten states of the United States and in Canada.

3. Wohl Shoe Company (hereinafter referred to as "Wohl") is a wholly owned subsidiary of respondent, and is a Missouri corporation with its principal office at 1601 Washington Avenue, St. Louis, Missouri. Wohl sells shoes at wholesale to independent retail customers and also at retail to consumers.

Wohl sells women's shoes at wholesale to approximately 3,200 customers located throughout the United States and the District of Columbia. In 1958 there were 208 of these customers operating on the "Wohl Plan". A Wohl plan account is an independent retail outlet which is partially financed by Wohl and generally buys most of its women's shoes from Wohl. In addition, Wohl retails primarily women's shoes, but also some children's and men's shoes. In 1958 Wohl was selling at retail through 457 leased departments in 243 stores.

Regal Shoe Company, a wholly owned subsidiary of respondent, is a manufacturer and retailer of men's medium-priced shoes. In 1958 Regal had a chain of 92 retail outlets in which its shoes were sold.

The G. R. Kinney Corporation is a wholly owned subsidiary of respondent. It operates a chain of family shoe stores and manufactures and sells men's, women's, and children's popular-priced shoes. In 1959 it owned and operated 488 retail stores.

4. Respondent has separate selling divisions through which it markets its brands of shoes. The principal brands and the divisions selling them are:

**[fol. 22] Division**

Air Step  
Buster Brown

Life Stride  
Naturalizer  
Risqué  
Robin Hood

Roblee  
United Men's

**Brand**

Air Step  
Buster Brown  
Glamour Debs  
Official Boy Scout  
Official Girl Scout  
Propr-Bilt  
Life Stride  
Naturalizer  
Risqué  
Robin Hood  
Robinettes  
Roblee  
Buster Brown  
Official Boy Scout  
Pedwin

Each of these sales divisions has its own sales manager and its own sales force. A retailer who sells respondent's shoes will be called on by a salesman from each division whose brand he carries. Each of the sales managers of the sales divisions is responsible to the vice-president in charge of sales.

5. In 1957, Brown conducted the largest consumer advertising campaign in the shoe industry, spearheaded by 52 color pages in Life Magazine and 58 additional pages in other leading national magazines.

6. Respondent's sales for the fiscal year ending October 31, 1959, including the sales of its subsidiaries at wholesale and at retail, were \$276,549,164. Respondent is second in dollar sales and third in pairage production among shoe manufacturers in the United States.

7. Respondent has been, and is now, in competition with other corporations, individuals, and partnerships engaged in the manufacture, sale, and distribution of shoes in interstate commerce.

8. Respondent manufactures shoes in six states of the United States. Respondent causes its shoes to be transported and shipped from these places of manufacture to retail [fol. 23] shoe customers who are located in each of the states of the United States and the District of Columbia.

There has been, and is now, a constant and continuous current and flow of said shoes in interstate commerce.

9. Another division of respondent is the Brown Franchise Stores Division. The personnel of this division includes the headquarters staff comprised of three men, one of whom is the manager of the division, and sixteen salaried fieldmen who visit the franchise stores. The franchise stores division is responsible to the vice-president in charge of sales.

10. During a recent five year period, 200 stores entered the program. In November 1959, there were 682 stores on the program, and in October 1961, the total had risen to 766.

11. Of the retailers operating on the franchise program, about 259 have entered into written Franchise Agreements with respondent. In recent years written agreements have not been made with newcomers to the program. There is no difference in respondent's policy toward those franchise holders who have signed the agreement and those who have not, and the rights and obligations of both groups are the same. The total sales of respondent to retail stores on the franchise program for the fiscal year ending October 31, 1959, was \$24,675,617.

12. For the benefits and services which dealers on the franchise program who entered into written agreements will receive, they agreed that:

"In return I will:

1. Concentrate my business within the grades and price lines of shoes representing Brown Shoe Company Franchises of the Brown Division and will have no lines conflicting with Brown Division Brands of the Brown Shoe Company."

This provision has been in effect since 1949 or 1950. The preceding Brown Franchise Contract provided that the Franchise Agreement terminated if the franchise dealer purchased shoes from any manufacturer other than Brown.

[fol. 24] 13. Among the benefits and services which a dealer will receive by being on the franchise plan are: architectural plans, service of a field representative, merchandising records, retail sales training program, account-



ing system, national and regional meetings, and group purchasing of insurance, rubber footwear, and display material.

14. The retailer on the franchise program obtains the service and assistance of field representatives who give advice and suggestions on merchandising, sales promotion, personnel, accounting and record keeping, and on other matters. In addition, these fieldmen will conduct a sales clinic or a salesmanship lecture for store personnel, and counsel a prospective franchise holder on the location of his store and terms of the lease.

15. Fieldmen call on the franchise holders from two to ten times a year and work exclusively with dealers on the franchise program; except when calling on other dealers to persuade them to go on the program, and during the "conversion" period when a dealer is about to go on the program.

16. Fieldmen assist in filling out monthly reports by the franchise holders. This report is sent to the respondent and shows the performance of each line for that month and the ending inventory. Fieldmen also help fill out the buying guide for the franchise holders. This buying guide is used in restocking a store, and helps the dealers determine the amount of shoes he will buy for the season. The buying guide contains statistics taken from the monthly reports, so that the franchise holder knows the performance of all his lines at the end of each season. The buying guide is prepared prior to the two buying seasons, which are spring and fall.

17. The accounting and record keeping system furnished through the franchise program is a complete record system for a shoe store. Franchise holders are given a continuing supply of these forms. One of the forms supplied is the monthly report, which the Franchise Agreement requires to be made regularly, but which many dealers make less frequently.

[fol. 25] 18. Respondent has an architectural department that will completely design a new store or draw plans to remodel an existing store in its entirety. As many as half of the franchise holders have used this service. Although the service is available to other retailers who concentrate

on respondent's shoes, 70-75 percent of the architects' time is devoted to working on plans for franchise stores.

19. Under an arrangement with U. S. Rubber Company, respondent receives a commission on purchases of U. S. Rubber Company footwear by dealers on the franchise program. For the fiscal year ending October 31, 1959, respondent received commissions totaling \$171,417.00. Respondent pays U. S. Rubber Company for the canvas and waterproof footwear purchased by the franchise dealers. U. S. Rubber Company ships the footwear directly to the dealers and respondent bills the franchise dealers. During 1959 there were 473 franchise dealers purchasing rubber or canvas footwear under this arrangement. From 1950 to October 21, 1955, respondent represented to franchise dealers that they would receive the following additional discounts on purchases through respondent, over and above the discounts available if purchased directly from U. S. Rubber Company:

#### Storm Footwear

Advance orders of more than 144 pairs and less than 480 pairs—3 percent.

Fill-in orders if bought in 12 pair runs and if merchants ordered more than 144 pairs on advance orders—8 percent.

#### Keds

Fill-in orders if bought in 12 pair runs and if merchants ordered at least 480 pairs on advance orders—8 percent.

These additional discounts were not made available by respondent to customers other than franchise dealers.

20. From 1956 up to 1959 respondent represented to franchise dealers that on this storm footwear and Kedettes they would get the 8 percent discount and 2 percent cash discount by purchasing 144 pairs, instead of having to [fol. 26] purchase 480 pairs to get those discounts if they were not on the franchise program. Respondent represented that on fill-in orders on these shoes the franchise dealers would get an 8 percent discount for buying 12 or more pairs which was not available to dealers not on the franchise pro-



gram. On Keds, the discount on fill-in orders is still in effect, and this discount is available only to respondent's franchise dealers.

21. Respondent represents to franchise dealers that they will be participating in group purchasing of fire, public liability, robbery, safe burglary, business interruption, and life insurance. From November 1, 1949, to October 31, 1955, respondent represented that merchants on the franchise program would receive a discount in price on fire insurance not available to individual outlets and represented to them:

"Because of the favorable experience the insurance company has had with our Franchise Store operators during the past 25 years, we are in a position to save the retailer approximately 25% on his fire insurance premium compared to his local rate."

Respondent has continued to represent that there would be considerable savings on insurance purchased through the franchise program. Respondent supplies the average inventory of the franchise holders to the insurance company, and for this service is compensated by the insurance company.

22. In addition to the benefits and services which dealers receive under the Franchise Agreement, many Brown Franchise Dealers have received loans from respondent. These loans are as high as \$30,000. On October 31, 1957, the total amount of loans to all dealers, including those under the franchise program, was \$844,886.83.

23. Large outside illuminated Roblee and Buster Brown signs and neon Naturalizer signs are given to dealers who aggressively push those lines and sell them effectively, and are not handling conflicting lines. The dealer pays \$1.00 for the outside sign, and he pays the maintenance cost, and the sign is given to the dealer until he stops handling the shoes, in which case, respondent takes the sign down. Brown Franchise Dealers have 30 of the 51 Roblee signs which respondent has given out, and they have 53 of the 115 Buster Brown signs given out.

24. Window decoration service for which there is a charge and the architectural service are offered to other dealers who concentrate on respondent's lines, as well as to Brown Franchise dealers. Respondent also gives dealers

window decoration without charge, such as neon signs and cards.

25. The forms upon which the Brown franchise fieldmen submitted their reports state: "Encourage Concentration on B. S. C. Lines and Elimination of Conflicting Lines". A newer form has eliminated this statement, but the omission did not change the practice.

26. The following written instructions to fieldmen by the manager and the assistant manager of the Brown Franchise Program show the policy of encouraging the concentration on Brown lines and the elimination of conflicting lines:

"This week our Buster Brown sales representative, Frank Mirra, called me and among various things discussed, he advised that he had just learned that Orville Shugart plans to buy American Girl line for Fall.

"George, let's get into this immediately and head this off before the shoes are received in the store. As you know, if the American Girl line is purchased, this will not be in keeping with our Franchise Program."

"I think it is time for a forthright discussion with Mr. Bump on what we attempt to accomplish with dealers who operate their business on our Franchise Program. If he does not see the wisdom of going along with the thought of operating these stores more progressively, avoid directly conflicting purchases, then I think we have no other alternative then to ask him to withdraw from the program."

"The one very important point that concerns me, T. R., is that you say he can get a better mark up on men's Great Northern shoes and that his customers [fol. 28] want leather soles. If this be the case and he is determined to continue to carry Great Northern instead of Pedwin, then we have no other alternative than to ask him to withdraw from the Franchise Program."

27. Such evidence as there is relating to action taken by the fieldmen in following these instructions indicates that they sometimes failed to achieve the desired results, and it appears that respondent's home office was sometimes lax in enforcing its policies, although, as hereinafter found, some

dealers were dropped from the program for failing to comply with this policy. The manager of Brown Franchise Stores Division testified that there was a point at which a dealer would be dropped from the program for carrying conflicting lines.

28. The manner in which the fieldmen encourage concentration on Brown lines and the elimination of conflicting lines is shown in the following excerpts from their reports :

"Outside lines were analyzed, and the unprofitable performance of these lines pointed out to the management. One line of ladies shoes that was bought in 8 patterns last spring, was cut to 4 patterns for the Fall buy, and will be reduced even further for next Spring's buy."

The only problem in this store, in-so-far as we are concerned, is the presence of an outside line of shoes. Tom and I talked with Clarence about this and he agreed to give the Life Stride serious consideration before buying next season. Apparently he was not aware of the strength of Life Strides and the strong position it holds in the stores."

"I will do everything possible to get this other line out of the store."

"A good portion of Jack's inventory represents spot shoes from outside lines and in talking with Jack he admits that these represent a small percentage of his sales and are not needed. In most cases they amount to overlapping patterns. Three lines of shoes will be eliminated this coming season."

"Outside lines were discussed and she also agrees that most are not necessary and will be discontinued."

[fol. 29] "Concentration on fewer lines and less patterns was discussed and will be applied more this fall. Debs are to be discontinued and Shelby Arch type shoes are to be replaced with Propr-Bilt."

"Concentration on fewer lines was discussed and it was decided to discontinue Golo dress flats and Grinnell sports."

29. During the fiscal years 1949 through 1955, respondent dropped 22 stores because of a failure to comply generally with the conditions of the Brown Franchise Agree-

ment, one of the conditions being the prohibition against handling conflicting lines. Respondent, in that period, dropped 19 stores for handling conflicting lines which was "completely contrary to the franchise agreement". From November 1, 1954, through April 1, 1958, a dozen or more dealers were dropped from the Brown Franchise Program primarily because they handled conflicting lines.

30. The Brown Franchise Dealers probably buy on an average about 75 percent of their total volume of shoes from respondent.

31. Shoe manufacturers try to have only one account carry each of their lines in a town or trading area. U. S. Shoe Corporation gives May Company Department Stores a 10-mile radius "protection". Freeman Shoe Corporation sells to only one account in a small town. So does respondent. Most Brown Franchise Dealers are found in towns of from 5,000 to 30,000 population, and in almost all instances there is only one franchise store in each community. Some manufacturers will put their line of shoes in two outlets in a town if one is a shoe store and the other is a department store.

32. Price is a factor in determining which outlets are available to a manufacturer. Not all retail shoe outlets are desirable customers for this reason. The outlet may stock shoes ranging too far below or too far above the manufacturer's suggested resale price to be a suitable outlet.

33. There are nearly 100,000 retail outlets in the United States which sell shoes. Many of these sell only a particular [fol. 30] style of shoe, such as cowboy boots in a western store, or baby shoes in a baby store. Many also have few shoes in relation to their total inventory, their shoes being carried as a side line. Among the outlets which sell shoes are the following types:

Grocery store	Drug store	Dollar store
Dry Goods	Surplus store	Health store
Variety store	5 & 10	Pawn shop
Shoe repair shop	Western store	Curio shop
Hardware store	Supermarket	Indian Post
Sporting goods store	Army Surplus store	Cafe

Saddle shop	Leather goods store	Glass manufacturer
Work clothes store	Zink smelter	Commissary
Oil company	Gun store	Baby store
Specialty store		

34. Brown Franchise Stores are choice retail shoe outlets. Because these stores are family shoe stores they are considered a prime market by respondent's competitors. They are considered most desirable from a volume as well as a credit standpoint. The average volume of sales in 1960 for stores on the Brown Franchise Program was \$97,000. The average return on investment for these stores has been 16 percent as against 11.8 percent for all independent shoe stores. Respondent characterizes its franchise dealers as the "most prosperous group of shoe retailers in America" and states that the Brown Franchise Program is not available to any shoe store but is best fitted for the "outstanding dealers" in each community.

35. Representatives from six of respondent's competitors testified that they were foreclosed from selling Brown Franchise Dealers generally. They testified that their sales volume was reduced or lost entirely to customers who became Brown Franchise Dealers. Most of them gave specific examples, some of which were erroneous, but it is clear that they lost volume to these accounts and some of them lost accounts completely. By the very nature of the transition of dealers to the Brown Franchise Program it would be [fol. 31] expected that many competitors would lose accounts completely to Brown and that others who did not lose the accounts would lose sales volume to these accounts. The question to be resolved is whether they, and as a consequence competition, were likely to be adversely affected by the restriction the Brown Franchise Program placed on the dealers to refrain from dealing in conflicting lines. The terms of the agreement are clear and the dealers undoubtedly knew what they had agreed to do, and when the written agreements were replaced with oral agreements, with the newer accounts in recent years, the terms were the same. The dealers could not know positively how rigidly they would be required to adhere to their agreements, but it

must be inferred that many of them would abide by their agreements to the letter. Over the years most of these dealers have learned that respondent will condone some duplication of lines, particularly if the outside line is a short line or a specialty line or if the real volume is in respondent's lines, because five out of six of them carry at least one line that competes to some extent with a Brown line. There is a point beyond which outside lines will not be tolerated by Brown, and it is believed that generally the dealers know what it is.

36. It is therefore found that the restrictive provision of the agreements between respondent and its Brown Franchise Stores Division dealers was a major factor in foreclosing markets to the competitors who testified herein, as well as to other competitors of respondent, and as a consequence competition has been adversely affected as will be hereinafter more specifically found.

37. Respondent contends that the contract requirement has been abandoned and that most of the present franchise holders have not signed a written agreement containing the restrictive provision. It also contends that it was not enforced and that the restrictive contract could not have had adverse effects. The evidence does not support these contentions, except that in recent years the written contract has not been used in bringing stores under the franchise plan, and many of the franchise holders testified that the restrictive provision was not called to their attention or enforced.

[fol. 32] 38. The evidence shows that the restrictive provision against handling conflicting lines has been enforced and will continue to be enforced and that it necessarily inhibits franchise holders from buying other brands which they would buy if they were not restricted.

39. It may be, as respondent contends, that for some retailers it would be an unwise business practice for them to carry conflicting lines, but the law protects the buyer's freedom of choice, even if the choice is uneconomic for him.

40. Respondent also contends that most franchise holders carry other lines, some of which are conflicting, and that this shows a lack of effectiveness of any restrictions if any there be. Most of the important conflicting lines carried by the franchise holders are short lines of specialty



shoes, such as Clinics (primarily for nurses) and Hush Puppies (loafers), which are condoned, but it is clear that respondent will remove customers from the plan when it considers the restrictive provision has been seriously breached. It will continue to sell these customers, but will not continue the benefits which accrue to Brown Franchise Plan customers.

41. The question remaining is whether the adverse effects of the practice may be substantial.

Although respondent is the second largest shoe manufacturer in the country, its sales through the Brown Franchise Plan are less than 1 percent of all shoes sold in the United States. It confines its production to medium-priced shoes which limits the area of effective competition to some indeterminate extent, but since most of these Brown Franchise Plan customers are in cities of 5,000 to 30,000 population, it would appear that the greatest effect of the restrictive provision would be felt in these localities. The substantiality of the effect is distorted by attempting to compare the market share sold through the franchise plan to the total United States market. It appears that each trading area where a Brown Franchise Plan account is located would be the appropriate geographical market in which to appraise the effects of the restrictive provision because the retail shoe [fol. 33] market is not a national market except to the slight extent that shoes are bought by mail. Because of custom, convenience, necessity, or perhaps other reasons, consumers usually purchase shoes in their local communities and it is the aim of most shoe retailers to give their customers such service and value as will retain their patronage. Considering the importance of fitting shoes, it is believed that purchases of shoes by mail constitute only a small part of the total sale of shoes and that the retail shoe market is essentially a series of local markets. In these trading areas the market share of the stores under the Brown Franchise Plan is, of course, much higher, and the number of retail competitors varies from about 5 to about 26.

42. Since there are about 600 such trading areas, in most of which the effect of the restrictive provision is substantial, it is concluded that the total effect on competition is substantial. The benefits of unrestricted competition should



be permitted to flow to competitors of respondent, to customers of respondent and their competitors, and to consumers. In many trading areas the benefits of competition are hindered by respondent's restrictive provision.

43. At least two other shoe manufacturers, which sell men's, women's, and children's shoes in direct competition with Brown, have franchise stores programs somewhat similar to respondent's program.

International Shoe Company, the nation's largest shoe manufacturer, sells men's, women's, and children's shoes under a variety of brand names which compete directly with Brown brand shoes. International has a franchise stores program under the direction of its Merchants Service Division, and the independent shoe retailers which operate on that program are known as Merchants Service Stores. In order to obtain the benefits and services available under the program, a Merchant Service Dealer agrees to feature the shoes of a division of International, in each type of shoes (men's, women's, and children's) he carries, and at all times to handle such shoes in a representative manner.

[fol. 34] General Shoe Company sells men's, women's, and children's shoes under a variety of brand names which compete directly with Brown brand shoes. General has a franchise stores program under the direction of its Genesco Retailers Service Agency, and the independent shoe retailers which operate on that program are known as Friendly Franchise Stores. In order to obtain the benefits and services available under the program, a Friendly Franchise Dealer agrees to purchase sufficient quantities of footwear from General, in each type of shoes (men's women's, and children's) he carries, as are necessary to assure the presence of an adequate and representative stock of merchandise in the Friendly Franchise Store at all times.

This record does not show whether the requirements of these contracts of International and General are construed to require the dealers to refrain from buying competitive shoes, but to the extent they are so construed, or to the extent they tend to create captive customers, the market open to the many sellers of shoes would be further restricted.

44. It is found and concluded that the effect of the methods, acts, and practices of the respondent, as hereinbefore found, has been, is, or may be, substantially to lessen, hinder, restrain, and suppress competition in the purchase and sale of shoes in interstate commerce; to cause a substantial number of retail shoe dealers to refrain from, or discontinue, buying and dealing in shoes of competitors of respondent; to exclude, or attempt to exclude, competitors of respondent from selling shoes to a substantial number of retail shoe dealers; to foreclose competitors of respondent from a substantial share of the retail dealer market in many trade areas; and to enhance the dominant position of the respondent in the shoe industry.

#### Count II

45. The foregoing findings numbered 1 through 10, 22, 34, and 38 relate to the charges in Count II of the complaint and it is so found. They are incorporated herein at this point by reference.

[fol. 35] 46. Respondent contends it does not require or attempt to require its dealers to adhere to its suggested resale prices. The evidence shows that respondent has a definite policy of seeking adherence to its announced or advertised resale prices and shows instances where, on two different occasions each, attempts were made to secure the adherence of two price cutters to suggested resale prices. It is not clear whether these attempts resulted in agreements with the customers each time, but they appear to have ultimately come into line with respondent's policy. In any event, respondent resorted to several means in an effort to bring this about, which included sending salesmen to advise the dealers of Brown's policies, telephoning one of them from the central office urging adherence, instructing salesmen to advise the dealer that continued lack of conformance would result in his being disenfranchised, arranging a meeting between its price-cutting dealer and a non-price-cutting dealer, urging that they agree upon adhering to suggested resale prices, attempting to suppress advertising of discount prices, and checking these dealers at a later time to determine whether they were conforming.

47. Each of the respondent's selling divisions publishes wholesale price lists for the brand or brands of shoes sold

by it. The Buster Brown and Robin Hood lists contain "suggested" retail prices. The United Men's and Roblee lists contain a schedule showing the retail price to be charged for each different wholesale price category. The women's and girl's shoe price lists do not contain a "suggested" retail price, but a suggested markup of "44 or 45 percent" is communicated to the customers orally by the salesmen. Because dealers know what the recommended markup is, they know automatically the suggested resale price. In addition, most of the respondent's selling divisions send out suggested retail price lists each season.

Respondent publishes suggested resale prices for some of its shoes in full page advertisements in magazines having national circulation. These ads often give a specific price for the shoe illustrated, as well as a price range for the line.

[fol. 36] 48. Respondent's director of marketing testified concerning customers of respondent who do not abide by the suggested resale price:

"Now, once in a while a fellow will get an idea that he is going to have an advantage, and we will try to get him turned around to where he wants to sell his shoes at the regular markup which other merchants are doing."

In response to a question as to the instruction given to salesmen who are sent to see price-cutting merchants, he said:

"... we have to go over and see this fellow and try to dissuade him from that practice . . . you have got to make your peace over in that area or you will lose several customers. So you have got to straighten it out.

"So the way to straighten it out is to try to show him the error of his ways and get him on the right basis because this practice of selling shoes at a discount price level is an almost inflexible thing with our brand of shoes. And when he is doing that he is in trouble."

When respondent first establishes a sales relationship with a retailer, the program of adherence to retail prices is discussed. Respondent's director of marketing was asked:

"When you take a new outlet that hasn't been in the shoe business you wouldn't know whether he is going to be a price cutter or not?"

He responded:

"Oh yes. You talk to him quite a while before you sell him, telling him what is expected of him."

The result of these conversations is that price-cutting dealers rarely get on the respondent's books.

49. During the summer of 1956, Fraver's Shoe Store of Chambersburg, Pennsylvania, a Brown franchise store, cut the price on certain patterns \$1.00 below the recommended price. Paul Dutrey, another Brown franchise holder with [fol. 37] stores in Waynesboro and Carlisle, Pennsylvania complained of this price cutting and he received help from respondent. George Croker, the Brown Franchise Stores Division field representative, was sent to see Fraver and he got Fraver and Dutrey to "have a cup of coffee together and talk it over" so that they could "have an agreement on the prices on their shoes." Croker reported back to J. R. Johnston, manager of the Brown Franchise Stores Division, that "Mr. Fraver has assured me he will maintain the prices on our shoes so there will be no conflict in the future." Croker's purpose in writing to Johnston was "To indicate to the St. Louis office that these two parties has— was going to get together and iron out any differences that they had in their thinking." Croker did get Fraver to agree to the "proper mark-up." Johnston wrote to Croker and stated that: "We certainly appreciate Fraver's willingness to cooperate".

50. Fraver apparently resumed price cutting because Johnston called him concerning his price cutting in June of 1957. On October 5, 1957, Dutrey directed a letter to Johnston complaining that Fraver was "• • • still underselling your shoes in every line." This letter was answered by T. R. Curtis, the assistant manager of the Brown Franchise Stores Division, who assured Dutrey that the field representative, George Croker, had been ordered to "• • • contact Fraver for the purpose of having a thorough understanding that he must discontinue this practice." In his letter to Croker, Curtis instructed:

"\* \* \* we want you to again, personally, contact Fraver for the purpose of discussing the necessity of his selling our lines at our recommended retail prices and if he does not agree to this, then it will be necessary for us to discontinue selling him. He will, perhaps, agree to our recommended prices and if so, be sure to have a very thorough understanding that if he does under-price the lines in the future, it will be necessary for us to discontinue our business relationship."

In addition, the fieldman was told to contact Dutrey after visiting Fraver "\* \* \* so he will know this is being taken care of."

On October 14, 1957, Dutrey again complained about Fraver's cutting prices, and this time threatened to discontinue purchasing Brown shoes "\* \* \* unless we get satisfactory guarantees from you that this practice will stop \* \* \*". Upon receiving this complaint, Johnston again telephoned Fraver, with the result that he was able to telegraph Dutrey that Fraver "\* \* \* agrees to abide by suggested retail prices all patterns of Brown Shoe Company lines he carries." And Johnston followed the telegram with a letter which read:

"This letter will follow up my telegram regarding the discussion I had with Mr. Fraver over at Chambersburg regarding the pricing of certain Brown Shoe Company patterns. I talked with him at considerable length on why it was necessary that we ask him to abide by our suggested retail prices and he agreed to do just that.

"He will remark any patterns that are necessary, at once, and I am confident that we will not have a recurrence of this situation. I have much respect for Mr. Fraver's integrity and with the long association we have enjoyed I know we can count on him to keep his word."

The manager of the Brown Franchise Stores Division also wrote to all the selling divisions of Brown telling them of Fraver's price cutting and recommending "\* \* \* that when you call on Mr. Fraver from time to time that you

check the retail prices for your particular line of shoes and make sure he is abiding by your suggested prices other than during clearance sale periods."

51. On June 15, 1956, Pomeroy's, a department store in Harrisburg, Pennsylvania, advertised Roblee shoes which normally sell for \$10.95 to \$16.95 at a sale price of \$6.99. Mr. Dutrey of Carlisle, Pennsylvania, complained to Brown that this action by Pomeroy's breached an agreement between Brown Franchise Dealers and the respondent as to when a clearance sale, with attendant reduced prices, was to be held.

Stanley Bozaich, manager of the Roblee Division, immediately contacted his salesman, John Mirra, and asked: "I want to know how come Pomeroy's ran this ad on June 15 showing these two shoes, as we have discussed previously [fol. 39] that this would not happen and our program on Roblee sales was definitely pointed out to them." And, he later wrote to the salesman and said:

"Regarding your conversation with Al Schwarz relative to the ad of June 15 in which they advertised Roblee shoes on sale, I believe you know the policy of the Company and this is definitely not allowed.

"Roblee shoes go on sale twice a year in July and January. Any other sale promotion on Roblee shoes is not to be advertised as such.

"I want you to straighten this out with Al Schwarz so that in the future regardless of whether we give him close-outs or he is running out his regular stock, this is not to happen."

The manager of the Brown Franchise Stores Division wrote to Dutrey and said that he had been taking care of the price cutting by Pomeroy's by "• • • telephone conversations with the salesman, with the merchandising manager of Pomeroy's, correspondence, etc." He said that in contacting the Roblee salesman and the sales manager about the price cutting, they "• • • have authorized me to give you their assurance that there will not be a recurrence of this."

52. In September of 1956 Pomeroy's again advertised Brown shoes below the suggested list prices and this time both Buster Brown and Roblee brands were involved.



Dutrey complained to the president of Brown and he advised Dutrey that the matter was "• • • being given thorough attention • • •". The "attention" consisted, in part, of the issuance by the Roblee Division sales manager Bozaich to his salesman, Mirra, the following instruction:

"Before I took any actual action with Pomeroy's I wanted to write and inform you of this situation. At this time I am going on record and telling you if this happens once again we will be forced to withdraw Roblee shoes from the Pomeroy store in Harrisburg.

"I understand a change in merchandise men is going on at the present time at Pomeroy's, however, putting a sale on Brown Shoe Company products and advertising [fol. 40] ing them at this particular time of the year is definitely against Company policy and we will not adhere to these principles.

"You will probably have to make a trip to Harrisburg to get this thing straightened out. The above facts will definitely have to be given to Pomeroy's since we do not want a repetition of this in the future."

53. Mirra made the trip to Harrisburg and went to see Moskowitz, who had succeeded Schwarz as merchandising manager at Pomeroy's. Mirra testified concerning his conversation with Moskowitz:

"• • • I said to Mr. Moskowitz, I realize that cleaning stock was very important and adjusting the inventory was very important but if he would just not advertise—put these shoes in the newspaper, just sell them, put them on the table and sell them so I could get Mr. Dutrey off my back."

54. The sales manager of the Buster Brown Division reported:

"Our salesman Tufshinsky has contacted these people and has their assurance that there will be no further cut-price promotions on our shoes at any time other than our Semi-Annual Sale periods."

55. That the above action by the sales managers of the Roblee and Buster Brown Divisions was taken at the be-



hest of the president, Clark Gamble, is shown by a letter from the Brown Franchise Stores Division manager, Johnston, to his field representative, Croker, in which letter he stated: "Mr. Gamble has insisted that the Sales Managers of these divisions get this situation straightened out. I am sure it will be." That rigid price maintenance is the official policy of Brown, endorsed and supervised by its highest official, is indicated by a memo to Gamble from Tom Curtis, assistant manager of the Brown Franchise Stores Division, which reads as follows:

"Dick Dutrey, son of Paul Dutrey who wrote you the attached letter, telephoned us about this situation on Monday of this week, I, personally, talked to Paul Dutrey this morning prior to having learned that he had written you and had sent in copies of the ads. In my [fol. 41] conversation, I assured him that this will be properly taken care of with Pomeroy's, in keeping with our pricing policies.

"I have discussed the Roblee under-pricing with Stan Bozaich and understand we had this same difficulty with Pomeroy's earlier this year. Stan is writing John Mirra, the Roblee Sales Representative selling Pomeroy's, instructing him to contact the account for the purpose of getting this straightened out so there will be no reoccurrence of under-pricing."

56. Some of respondent's dealers occasionally vary their resale prices from respondent's suggested prices by 50 cents or a dollar on some styles without complaint from respondent or any competitor, but there is no evidence that their competitors or respondent were aware of these deviations.

57. Respondent has required, and attempted to require, certain of its customers to agree to maintain resale prices established by respondent, and through the use of such policy and practice has suppressed and eliminated price competition between customers.

### Conclusion

The acts and practices of respondent as herein found are all to the prejudice of competitors and customers of the respondent and of the public, have a tendency to hinder,

prevent and restrain, and have actually hindered, prevented and restrained, competition in the purchase and sale of shoes in interstate commerce, and constitute unfair methods of competition and unfair acts and practices in violation of Section 5 of the Federal Trade Commission Act.

### Order

It Is Ordered that respondent Brown Shoe Company, Inc., its officers, representatives, agents, employees, subsidiaries, successors, and assigns, directly or through any corporate or other device, in or in connection with the offering for sale, sale and distribution of shoes, in interstate commerce, do forthwith cease and desist from:

[fol. 42] 1. Entering into, continuing in operation or effect, or enforcing any agreement or understanding with any customer or prospective customer or imposing any condition upon any customer or prospective customer, which has the purpose or effect of precluding such customer or prospective customer from independently determining whether shoes will be purchased by such customer or prospective customer from any competitor of respondent or from independently determining the volume of such shoes to be purchased.

2. Obtaining or attempting to obtain from any customer or prospective customer any agreement, understanding or assurance concerning the price at which any shoes are to be resold.

3. Entering into, continuing, or enforcing any agreement or understanding with any customer or prospective customer concerning the price at which any shoes are to be resold.

Edward Creel, Hearing Examiner.

January 22, 1962.

## BEFORE FEDERAL TRADE COMMISSION

## PETITION FOR REVIEW—Filed February 19, 1962

Comes now petitioner, Brown Shoe Company, Inc., and respectfully requests the Federal Trade Commission to review the findings of fact, conclusions and order made and issued by Hearing Examiner Edward Creel in his initial decision in the above matter filed January 25, 1962 and served upon petitioner February 2, 1962.

## Questions Presented for Review

In arriving at an ultimate determination of whether petitioner has engaged in unfair methods of competition and unfair acts or practices in commerce in violation of Section 5 of the Federal Trade Commission Act, two basic questions are presented for review by this Commission.

[fol. 43] The basic question which arises under Count I of the complaint is

Whether, on the basis of the record evidence, the Hearing Examiner erred in finding and concluding that the effect of the methods, acts, and practices of the petitioner, in connection with its franchise program, has been, is, or may be, substantially to lessen, hinder, restrain, and suppress competition in the purchase and sale of shoes in interstate commerce; to cause a substantial number of retail shoe dealers to refrain from, or discontinue, buying and dealing in shoes of competitors of petitioner; to exclude, or attempt to exclude, competitors of petitioner from selling shoes to a substantial number of retail shoe dealers; to foreclose competitors of petitioner from a substantial share of the retail dealer market in many trade areas; and to enhance the dominant position of the petitioner in the shoe industry.

The basic question presented under Count II of the complaint is

Whether, on the basis of the record evidence, petitioner has required, or attempted to require, its customers to maintain resale prices established by peti-

tioner and, through the use of such policy and practice, has suppressed and eliminated price competition between customers.

The consideration and determination of these basic questions must also include a review of the following questions of law and fact.

As to Count I:

(a) Whether the Hearing Examiner erred in finding and concluding that petitioner's franchise program, under which it grants benefits and services of the type and character in evidence to retailer customers who concentrate on buying the lines of shoes manufactured by petitioner, is unlawful, in view of the fact that the reliable, probative and substantial evidence in the record showed, among other things, that

[fol. 44] (1) Competitors of petitioner are not foreclosed from selling their shoes to shoe retailers operating on petitioner's franchise program;

(2) Shoe retailers operating on petitioner's franchise program are free to withdraw at any time from the program; and

(3) The amount of commerce affected by petitioner's franchise program is not substantial.

(b) Whether the Hearing Examiner erred in finding and concluding that Brown franchise stores are foreclosed to competitors of petitioner and that said franchise stores are prevented by petitioner from buying other brands or lines of shoes, in view of the fact, among other things, that

(1) The testimony of the franchise dealers called as witnesses showed conclusively that they were free to buy from any shoe manufacturer they desired;

(2) The testimony of the six manufacturers called as witnesses herein was so filled with hearsay, speculation, conjecture and error as to render it unacceptable as a basis for findings of fact and conclusions;

(3) The record evidence clearly showed that competitors of Brown can and do sell shoes to Brown franchise stores; and

(4) Such finding was arbitrary and capricious and not supported by the reliable, probative and substantial evidence in the record.

(c) Whether the Hearing Examiner erred in determining that the individual trade areas in which Brown franchise stores are located was the appropriate geographical market in which to appraise and determine the effect of petitioner's franchise program upon competitors of petitioner, in view of the fact that the evidence affirmatively showed, among other things, that shoe manufacturers sell and ship shoes to retailer customers throughout the entire United States, and that the proper geographical market area in which to appraise and determine the effects of petitioner's franchise program on its competitors is the nation as a whole.

(d) Whether the Hearing Examiner erred in finding the amount of commerce affected by petitioner's franchise program is substantial, in view of the fact that the evidence showed, among other things, that sales through petitioner's franchise program are considerably less than 1 per cent of all shoes sold by shoe manufacturers in the United States.

(e) Whether the Hearing Examiner erred in finding that the effect of petitioner's franchise program is substantial, and that competition is hindered by petitioner's franchise program, in many of the trading areas in which Brown franchise stores are located, for the reasons, among others, that such finding was arbitrary, speculative and not based upon reliable, probative or substantial evidence in the record.

(f) Whether the Hearing Examiner erred in ruling, on July 20-21, 1961, over the objection of petitioner, that petitioner could not call as witnesses any more franchise dealers to testify to the same or similar matters testified to by franchise dealers previously called as witnesses, for the reason, among others, that he did, by such action and ruling, deprive petitioner of its right to a defense, constituting a denial of due process of law.

**As to Count II:**

Whether the Hearing Examiner erred in finding and concluding that petitioner has an official policy of rigid price maintenance, and a definite policy of seeking adherence to its announced or advertised resale prices, in view of the fact that the reliable, probative and substantial evidence in the record showed, among other things, that

(1) There were only two instances out of the entire dealings of petitioner with its thousands of customers [fol. 46] over the years in which it could be alleged that attempts at adherence to petitioner's suggested resale prices were even considered;

(2) No agreements or arrangements concerning the price at which petitioner's shoes were to be resold were ever made or entered into in either of the two instances;

(3) Petitioner's customers independently determined the prices of the shoes they sold; and

(4) There was no evidence in the record that any act by petitioner had ever prevented or in any way hindered the independent or voluntary determination by petitioner's customers of the prices at which any shoes were sold by them.

**As to Counts I and II generally:**

Whether the Hearing Examiner erred in making certain other findings of fact and conclusions, too numerous to mention specifically, for the reasons that such findings and conclusions are arbitrary, speculative, incomplete, contradictory and misleading, and not supported by the reliable, probative and substantial evidence in the record.

Finally, the following question is presented for review, in connection with the order made and issued by the Hearing Examiner in this matter.

Whether the Hearing Examiner erred in making and issuing his order against petitioner in this matter for the reasons, among others, that



(1) Said order is too vague and indefinite to be enforceable;

(2) Said order is too vague and indefinite to properly inform petitioner of its duties and obligations thereunder; and

(3) Said order is excessively broad in scope and does not properly conform to the complaint or the evidence in this matter.

[fol. 47]

#### Statement of Facts

Petitioner, Brown Shoe Company, Inc. is a New York corporation with principal offices located in St. Louis County, Missouri. It is primarily engaged in the manufacture and distribution of shoes at the wholesale level. Petitioner manufactures a broad line of medium priced branded shoes for men, women and children. It also manufactures shoes which are sold to certain retail stores, chain stores and mail order houses for resale under the private brand names of such customers.

Shoes manufactured by petitioner are principally marketed by sales at wholesale to independent retail shoe customers, including individual shoe stores, chains of shoe stores, specialty stores, department stores and various other types of retail outlets. At the time the complaint in this matter was issued, petitioner was actively selling to approximately 6000 independent retail shoe customers located throughout the United States. Total sales of petitioner to these 6000 customers for the fiscal year 1959 were \$111,292,872.

Petitioner's total sales for the fiscal year 1959 of shoes and all other articles, at wholesale and retail, including the sales of all subsidiaries, were \$276,549,164. Its sales for the same period, not including sales of or to its subsidiaries, were \$113,359,505. According to published industry figures, petitioner with its subsidiaries was second in dollar sales and third in pairage production in the shoe industry in 1958 and 1959.

The record in this matter shows there were between 900 and 1000 separate manufacturers of leather shoes in the country in 1959. Leather shoe manufacturers produced 522.5 million pairs of shoes in 1950 and they produced over 632 million pairs in 1959. It is estimated that total dollar sales by manufacturers of shoes in the industry as a whole



in 1959 were approximately 3½ billion dollars. The record also shows that there were nearly 100,000 retail outlets selling shoes in the United States in 1959.

Petitioner has a franchise stores program which was started in 1921. The purpose of the program was and is [fol. 48] to help the independent retailer who wishes to carry petitioner's branded lines become a better and more successful merchant. Fieldmen who service the franchise accounts offer guidance to them with retailing and merchandising problems, help them with record keeping and accounting, and encourage the dealer to concentrate on a few lines so that he can do a more profitable job.

It was stipulated in this proceeding that as of November 20, 1959, a total of 682 independent retailer customers of petitioner were operating on its franchise program. Total sales by petitioner to these 682 retailers for the fiscal year 1959 were \$24,675,617. This was less than 1 per cent of all shoes sold in the United States during that same year.

The franchise stores are, for the most part, located in towns or cities having populations of from 5000 to 30,000 persons and in almost all instances there is only one franchise store located in a community.

Count I of the complaint issued herein on October 13, 1959, alleged in substance that petitioner was guilty of unlawful exclusive dealing practices in connection with its franchise program. The complaint charged that valuable benefits or services were received by Brown franchise stores from or through petitioner, and that as consideration for these benefits or services the franchise stores were required to concentrate their purchasing in the grades and price lines of shoes sold by petitioner and were prohibited from purchasing, stocking, or reselling shoes manufactured by competitors.

Counsel for the complaint, to support the charges, relied primarily upon a written franchise agreement which petitioner had with approximately one-third of the franchise dealers, excerpts from fieldmen's reports and testimony by six shoe manufacturers who claimed they were foreclosed from selling their lines of shoes to Brown franchise stores.

Petitioner introduced evidence through exhibits and witnesses, which showed that in fact its competitors could [fol. 49] and did sell their lines of shoes to Brown franchise stores, and that this was true as to the six manufac-

turers whose representatives testified they were foreclosed. Petitioner called as witnesses 34 franchise dealers and two former franchise dealers, who testified to their understanding of the Brown franchise program and their experiences as participants in it. They testified that they were free to leave the Brown franchise program immediately at any time they so desired, and that they, like other shoe retailers generally, were guided in their selection of shoes by considerations of profit and performance. They further testified to their individual freedom to buy whatever lines of shoes they wished. Petitioner was precluded from calling additional franchise dealers to testify as to the same or similar matters by a ruling of the Hearing Examiner made July 20-21, 1961, to which petitioner took exception.

Count II of the complaint charged that Brown forces and requires, or attempts to force and require, its retail shoe store customers to agree to maintain arbitrary, non-competitive resale prices fixed and promulgated by Brown.

In support of this contention, counsel for the complaint relied upon documentary evidence of two instances of alleged attempts by petitioner to secure adherence to its suggested resale prices, and upon his construction of testimony given by petitioner's employees.

Petitioner denied such charges and introduced evidence which directly refuted the alleged instances of adherence to its suggested retail prices, and petitioner pointed out that the evidence relied upon by counsel for the complaint was limited to two instances out of the myriad of business contacts and communications petitioner had with its 6,000 customers throughout the country. It showed that its retailer customers are completely free to independently and voluntarily determine the prices at which any shoes are resold by them.

The hearings in this matter were concluded on October 31, 1961. Proposed findings of fact and conclusions were filed by both sides, oral argument was had thereon, and [fol. 50] on January 25, 1962 the Hearing Examiner filed his initial decision, which was thereafter served on February 2, 1962. In his decision the Hearing Examiner found against petitioner on both counts of the complaint. Petitioner now seeks to have this decision and the accompanying order reviewed by this honorable Commission.

### Review Is in the Public Interest

Review by the Commission of the questions presented for review by petitioner is in the public interest for several reasons.

A review of the substantial questions of fact and law presented by the petitioner is necessary and appropriate in order to insure to petitioner a just and proper disposition of this matter and to protect its rights herein.

The questions presented for review involve matters of importance, not only to petitioner but to the business community generally.

This case raises a question of first impression. Insofar as petitioner is aware, there are no reported cases in which the granting of benefits and services of the type and character in evidence to customers who concentrate their business with petitioners so long as they choose to do so, and who can withdraw from the program at any time, has been held to foreclose competitors and thereby constitute an unfair method of competition.

Petitioner believes that the findings and conclusions of the Hearing Examiner as to the substantiality of the effect of the Brown franchise program are in error and completely contrary to the existing case law in this area (See, for example, *Tampe Electric Co. v. Nashville Coal Co.*, 365 U. S. 320 (1961)).

Other important questions of law and fact are raised by the findings and conclusions of the Hearing Examiner under Count II of the complaint by virtue of the fact that such findings and conclusions are not supported by the substantial evidence in the record as set forth more particularly in the questions presented for review above.

[fol. 51] Wherefore, for the reasons stated above, petitioner requests that its petition for review be granted by this honorable Commission.

Respectfully submitted, Gaylord C. Burke, Edwin S. Taylor, Counsel for Respondent, Brown Shoe Company, Inc.

Bryan, Cave, McPheeters & McRoberts, Of Counsel.

February 17, 1962.

## BEFORE FEDERAL TRADE COMMISSION

## ORDER GRANTING PETITION FOR REVIEW—March 15, 1962

Respondent having filed on February 19, 1962, a petition for review of the initial decision of the hearing examiner in this proceeding pursuant to §4.20 of the Commission's Rules of Practice, and counsel supporting the complaint having filed an answer in opposition thereto; and

The Commission having determined that said petition should be granted:

It Is Ordered that respondent's petition for review of the hearing examiner's initial decision be, and it hereby is, granted.

By the Commission.

Joseph W. Shea, Secretary.

Issued: March 15, 1962.

## BEFORE FEDERAL TRADE COMMISSION

## Final Order—February 20, 1963

This matter having come on to be heard upon respondent's exceptions to the initial decision of the hearing examiner [fol. 52] and upon briefs and oral argument in support of said exceptions and in opposition thereto, and counsel for both parties having filed on September 4, 1962, a "Joint Motion for Correction of Record"; and

The Commission having rendered its decision denying the exceptions of respondent and having determined that the aforesaid "Joint Motion for Correction of Record" should be granted:

It Is Ordered that the hearing examiner's initial decision be modified by striking therefrom paragraphs 41 and 42 of the findings and substitute therefor the findings embodied in the accompanying opinion beginning on page 21 \*with the words "In short, from our review of the record," and ending on page 27 \*with the words "interfering with

\* Record pages 73 and 79 respectively.

the latter's independent judgment in making purchasing decisions."

It Is Further Ordered that the hearing examiner's initial decision, as modified and supplemented by the accompanying opinion be, and it hereby is, adopted as the decision of the Commission.

It Is Further Ordered that the "Joint Motion for Correction of Record" filed September 4, 1962, be, and it hereby is, granted.

It Is Further Ordered that respondent, Brown Shoe Company, Inc., a corporation, shall, within sixty (60) days after service upon it of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which it has complied with this order.

By the Commission, Commissioners Anderson and Higginbotham not participating.

(Seal.)

Joseph W. Shea, Secretary.

Issued: February 20, 1963.

## BEFORE FEDERAL TRADE COMMISSION

Docket No. 7606.

In the Matter of Brown Shoe Company, a Corporation.

## Commissioners:

Paul Rand Dixon, Chairman,  
Sigurd Anderson,  
Philip Elman,  
Everette MacIntyre,  
A. Leon Higginbotham, Jr.

OPINION OF THE COMMISSION—Filed February 20, 1963

By Dixon, Commissioner:

## I

## Complaint, Initial Decision, and Respondent's Exceptions

This matter is before us on the exceptions of respondent, Brown Shoe Company, Inc. (Brown), to the initial decision and order of the hearing examiner holding that respondent violated Section 5 of the Federal Trade Commission Act by virtue of its franchise agreements with independent shoe retailers as well as by its activities in connection with resale price maintenance.

Specifically, Count I of the complaint charges that respondent, through its Brown Franchise Stores Division, has been and is now engaged in unfair acts and practices by entering into contracts or franchises with a substantial number of independent shoe retailers, requiring such customers to restrict their purchases of shoes for resale to respondent's lines and precluding such retailers from purchasing the products of Brown's competitors. The complaint alleges further in this connection that franchisees under the plan receive valuable benefits and services and that in consideration therefor they were required to concentrate their purchases on the grades and price lines of shoes sold by Brown and to refrain from selling the shoes of competitors. The complaint charges that dealers who violate the agreement to concentrate on respondent's shoes and to refrain from handling lines conflicting with



those of respondent are dropped from the Brown franchise plan and deprived of its attendant benefits. The complaint states that the purpose, intent or effect of respondent's franchise plan may be substantially to lessen and restrain competition in the purchase and sale of shoes in interstate commerce, to foreclose a substantial share of the retail dealer market in many trade areas to Brown's competitors, as well as to further enhance the dominant position of Brown in the industry and tend to create a monopoly in Brown in the purchase and sale of shoes in interstate commerce.

Count II of the complaint charges that respondent's requirement or its attempt to require that its retailer customers adhere to arbitrary and noncompetitive prices promulgated by Brown is an unfair method of competition.

The hearing examiner, in the initial decision, found that counsel supporting the complaint had sustained the burden of proof under both counts of the complaint and ordered respondent to cease and desist from entering into or continuing agreements or understandings with the purpose or effect of precluding its customers from independently deciding whether shoes should be purchased from Brown's competitors, as well as the volume of such purchases. The order entered by the initial decision further prohibits respondent from obtaining or attempting to obtain agreements, understandings or assurances from its customers on the resale price of its shoes.

Although respondent takes numerous exceptions to the examiner's findings, the thrust of its argument on appeal may be briefly summarized. With respect to the allegations under Count I of the complaint, respondent contends there is no substantial evidence to support the finding that the restrictive provision in the franchise agreement requiring concentration on Brown's products and prohibiting purchase of lines conflicting with respondent's had been enforced or that the restrictive provision necessarily inhibited stores under the franchise plan from buying other brands which they would have purchased if not so restricted. Respondent further denies that the record justifies the inference that the restrictive provision in the written franchise agreement had been agreed to by the ma-



jority of franchise dealers who had not signed such an instrument. Respondent takes the position that the hearing examiner, in making the finding that the restrictive provision in issue here was enforced, erred in relying on the memoranda of Brown's employees and officials, when the inferences which could be drawn from these documents were rebutted by the testimony of respondent's witnesses. Respondent argues that accordingly such inferences were contrary to the weight of the evidence. Respondent contends further that its Brown franchise plan is lawful and that the services furnished under the program give Brown no leverage whereunder the franchisees can be forced to buy Brown brand shoes. Respondent further maintains that membership in the franchise program does not affect a retailer's ability to purchase the respondent's shoes under the same terms and conditions as all customers.

Respondent argues that there has been no showing that its competitors are foreclosed from selling to franchise stores or that the adverse effect of the franchise plan on competition has been substantial. In this connection the respondent also claims that the examiner erred in delineating the relevant geographic market as the trading areas where a Brown franchise plan account is located. Brown states that the proper geographic market is the nation as a whole, since this is the area of effective competition between Brown and other shoe manufacturers. Respondent, in effect, claims that had the examiner correctly defined the relevant market he would have been forced to find that Brown's sales to its franchise stores were not substantial.

In the case of the charges under Count II of the complaint, respondent argues that there is no substantial evidence to support the finding that it required or attempted to require its customers to maintain the resale prices which it established. Respondent argues that the record shows only that Brown encouraged its customers to obtain an [fol. 56] adequate markup to cover their expenses. As in the case of its exceptions to the examiner's findings under Count I, respondent urges that the hearing examiner erroneously relied on inferences drawn from documentary evidence which the testimony of its customers, employees and officials had rebutted. In this connection respondent argues

that such inferences were therefore necessarily contrary to the weight of the evidence.

Brown also objects to the order entered below on the ground that it is vague and indefinite, excessively broad, and not in conformity with the complaint or the evidence in the record.

## II

### The Operation of the Brown Franchise Program.

The threshold question presented by respondent's exceptions to the examiner's findings under Count I is whether he correctly found that the restrictive provision against the handling of conflicting lines had been, and will continue to be, enforced, and that it necessarily inhibits franchise holders from buying other brands which they would buy if not so restricted.<sup>1</sup>

Respondent argues, in effect, that the restrictive provision is not enforced insofar as the signers of written franchise agreements are concerned and is not even a part of the agreement or understanding between respondent and those franchise holders who did not sign such an instrument. Upon a review of the evidence we are persuaded the finding in question is clearly supported by substantial evidence.

The franchise agreement states:

"In return I will:

Concentrate my business within the grades and price lines of shoes representing Brown Shoe Company Franchises of the Brown Division and will have no lines conflicting with Brown Division Brands of the Brown Shoe Company."

[fol. 57] The proviso on its face restricts franchisees as to the purchases they may make from competitors of Brown. Further, the manager of the Brown Franchise Stores Division, in the course of his testimony in this proceeding, expressly admitted that the restrictive provision was equally applicable to signer and nonsigner franchise

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<sup>1</sup> Initial Decision, Paragraph 38.

holders alike.<sup>2</sup> It is therefore difficult to understand respondent's bald assertion that there is no evidence demonstrating that the restrictive proviso was part of the agreement and understanding between respondent and those franchisees not signing the agreement.

The documentary evidence in the record on which the hearing examiner relied, namely, the instructions to field men from the manager and assistant manager of the franchise program as well as the field men's reports to their superiors, clearly support the finding that respondent's field men were expected to, and did their utmost to, encourage concentration on Brown lines and elimination of conflicting lines.<sup>3</sup> The following declarations by Brown field men or their superiors support the hearing examiner's finding on this point:

"... He has been urging us to allow him to carry 'Town and Country' which are profitable for him in Willimantic and has been refused. I am leaving Risque in as a cushion for this problem. Time will have to settle that problem." (Brown Franchise Division Inter-Company Correspondence—McEmery to Lon

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<sup>2</sup> "Q. With respect to paragraph 1 of Exhibit 25-C [the restrictive provision] and its interpretation, do you make any distinction between the Brown franchisees who have signed one of these contracts and those who have not signed a contract?

"A. No, sir.

"Q. Would that be true of the provisions of the Brown franchise program as a whole? In other words, the services that a man can get and the requirements and obligations that he is supposed to live up to.

"A. Yes, that is correct. There would be no variation of service or items whether he signed the agreement or not."

If this statement is not to be taken as an express admission that the terms of the restrictive proviso are applied to both signers and non-signers of the agreement alike, then the utility of the English language as a suitable means of communication is indeed subject to question.

<sup>3</sup> Initial Decision, Paragraphs 26 and 28.

Carrol, dated February 4, 1957, re Prague Shoe Company, New London, Conn.)

[fol. 58] "Outside lines were discussed and she also agrees that most are not necessary and will be discontinued. This will eliminate many over-lapping patterns and types that she does not need in this low-volume store." (Report of field man Bob Taylor to Tom Curtis re White's Shoe Store, Lancaster, New Hampshire, July 19, 1958.)

"He has already discontinued Heydays and will drop Jolene, Williams and Show Offs for fall. He is concentrating more on our lines each season." (Report of field man T. R. Forgan to Franchise Division, dated April 26, 1958, re Ward's Bootery, Chanute, Kansas.)

"I think it is time for a forthright discussion with Mr. Bump on what we attempt to accomplish with dealers who operate their business on our Franchise Program. If he does not see the wisdom of going along with the thought of operating these stores more progressively, avoid directly conflicting purchases, then I think we have no other alternative than to ask him to withdraw from the program." (Letter to field man T. R. Forgan from Dick Johnston, Manager of the Brown Franchise Stores Division, dated February 18, 1958, re Lloyd's Shoes, Wichita and Great Bend, Kansas.)

"The one very important point that concerns me, T. R., is that you say he can get a better mark up on men's Great Northern shoes and that his customers want leather soles. If this be the case and he is determined to continue to carry Great Northern instead of Pedwin, then we have no other alternative than to ask him to withdraw from the Franchise Program." (Letter to Brown field man T. R. Forgan, from Dick Johnston, March 11, 1958, re Bump Shoe Stores, Wichita and Great Bend, Kansas.)

These statements and others in a similar vein are contained in memoranda pertaining to retailers who had signed the agreement as well as to nonsigners. They clearly demonstrate that Brown field men, pursuant to the instructions of their superiors, followed a policy of discouraging the pur-

chases of competitors' lines conflicting with Brown and [fol. 59] urging the elimination of conflicting lines. These actions were obviously pursuant to the restrictive policy expressed in the written franchise agreement applicable to signers and nonsigners alike.

Another persuasive fact compelling the same conclusion is the legend "Encourage concentration on B. S. C. lines and elimination of conflicting lines" borne for some time on the field men's reports. This slogan also supports the inference that the basic purpose of the program as far as Brown is concerned is to serve as a medium to persuade a selected group of stores, namely, its franchise dealers, to restrict their purchases of shoe lines conflicting with those of respondent.

Brown's argument that the restrictive provision is not enforced or a part of respondent's arrangement with all of the franchise stores, namely, the nonsigners, is not reconcilable with the admission in respondent's brief, obviously applicable to the franchise program as a whole, that:

"The record shows that Brown franchise dealers are offered and given the benefits and services of the kind and character in evidence, in return for concentrating on Brown's lines, and carrying them in a representative manner. If and when a dealer decides to cease concentrating on Brown lines and to purchase the major portion of his requirements elsewhere, he may be asked to leave the franchise program (CX 28, 29). This is Brown's relationship to its Brown franchise dealers, both with and without written agreements."<sup>4</sup>

Even in the light of this rather euphemistic statement, the assertion that the restrictive provision was not a part of the understanding between respondent and all its franchise holders strains credulity. A more realistic appraisal of the actual situation as disclosed by the record is, of course, that the program requires respondent's franchisees to purchase the majority of their shoes from Brown and consequently they are sharply restricted in the purchases they may make from Brown's competitors.

[fol. 60] The true nature of the relationship between

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<sup>4</sup> Respondent's Brief, page 19.

Brown and its franchisees, however, is explicitly set forth in the answer by respondent to interrogatories in *United States v. Brown Shoe Company et al.*<sup>5</sup> There respondent expressly stated that the handling of conflicting lines is one of the factors considered as a failure generally to comply with the conditions of the franchise program. In this connection, Brown's reply further stated: "This [conflicting lines] covers the situation where the franchise account sold shoes of another company which directly conflicted with a line or lines of shoes manufactured by Brown Shoe Company. This was completely contrary to the franchise agreement."<sup>6</sup>

Aarol C. Fleener, vice-president of respondent, testified in *United States v. Brown Shoe Company et al.*,<sup>7</sup> that:

"Q. Do you ever drop a dealer because he carries conflicting lines?

"A. We will drop them from the franchise plan, yes, if they persist in carrying conflicting lines."<sup>8</sup>

Moreover, the record demonstrates specific instances where retailers have been separated from the franchise program in the course of enforcing the restrictive terms of the agreement pursuant to the policy enunciated by Mr. Fleener. For example, Samuels Shoe Store, Compton, California, Richards Shoes, Norwalk, California, Seymours Shoes, Evansville, Indiana, and Revell and McCall Store, Emporia, Kansas, among others, were all separated from the program at various times in the period November 1954 to April 1958 for carrying shoes conflicting with those of respondent's.

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<sup>5</sup> 179 F. Supp. 721 (E. D. Mo. 1959), *aff'd* 370 U. S. 294 (1962).

<sup>6</sup> This material is incorporated into the record as CX 28. It may be noted that respondent's definition of its policy on its franchiseholders' purchases from competitors (note 4, *supra*), which is based in part on this exhibit clearly glosses over the admission that purchases of conflicting lines are completely contrary to the franchise agreement.

<sup>7</sup> *Supra*, note 5.

<sup>8</sup> Included in this record as CX 118.



The memoranda of respondent's personnel demonstrating Brown's efforts to eliminate or restrict the franchise [fol. 61] holders' purchases of conflicting lines, coupled with the language of the restrictive proviso in the written agreement, as well as the actual enforcement of that provision, shown by the separation of noncomplying retailers, evidence respondent's intent to restrict the access of other shoe manufacturers to retailers under the franchise plan. It is inconceivable that respondent, which obviously invested considerable time and effort and expense in the program, would permit a retailer to enter or enjoy the benefits of the plan unless he assented to what was clearly Brown's purpose in establishing the program. Our conclusion on this point is confirmed by the following testimony of Mr. Fleener also given during the course of the trial in *United States v. Brown Shoe Company et al.*:

"Q. During the past five or six years, have any franchises been discontinued because the franchisee didn't concentrate on Brown branded merchandise?

"A. Yes, I would say there have been some.

"Q. Before you dropped the franchisee, did you warn him that you're going to drop him?

"A. Naturally, in dealing with our customers, we try to get them to follow the program and if we find they persist in not doing it, why, then there's no point in continuing this plan.

"Q. You point out the various benefits of the plan and try to get them to concentrate on your lines?

"A. Yes, we do.

"Q. Do you feel that there's no point in continuing the plan if the firm won't concentrate on your lines?

"A. As a franchise man, yes. We'll still sell them shoes, branded shoes."

In the light of these considerations, we must concur with the hearing examiner's reliance on the documentary evidence in preference to the testimony of respondent's dealer witnesses. Respondent's accusation, that in not taking the testimony of its dealer witnesses at face value the hearing examiner arbitrarily and unjustly ignored the only substantial evidence in the record, is without merit. Documen-

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\* Id.



tary evidence subsequently contradicted or explained by [fol. 62] participants to the events related therein or qualified by the authors or other witnesses is, of course, not by virtue of that fact inherently insubstantial or necessarily outweighed by such testimony.<sup>10</sup>

The fact is that the hearing examiner, in making the disputed findings, performed precisely the function for which he was appointed, that is, to evaluate and weigh the probative worth of conflicting evidence; this is a task which he is uniquely equipped to perform since he observed the demeanor and bearing of the witnesses during the course of their testimony. Respondent, in effect, would strip both the examiner and the Commission of the fact-finding function imposed upon them by statute. It is, of course, well settled that, even in those instances where substantial evidence supports inconsistent inferences, an administrative agency is not precluded from drawing one of them.<sup>11</sup>

We now turn to respondent's related procedural argument that the examiner erred in refusing permission to adduce additional testimony from franchise dealers on their understanding of and experiences with the Brown franchise program. Respondent contends that this testimony should not have been curtailed until the examiner could make a finding that the remaining Brown franchise dealers, if called to testify, would testify along the same or similar lines as the thirty-six dealer witnesses whom respondent had already called to the stand.

Section 4.14 (b) of the Commissioner's Rules of Practice, which respondent cites in this connection, although providing that every party shall have the right to present evidence,<sup>12</sup> does not confer a license to present cumulative or unduly repetitive evidence.

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<sup>10</sup> Cf. *United States v. United States Gypsum Co. et al.*, 333 U. S. 364, 396 (1948).

<sup>11</sup> *National Labor Relations Board v. Nevada Consolidated Copper Corp.*, 316 U. S. 105, 106 (1942); *Carter Products, Inc. v. Federal Trade Commission*, 268 F. 2d 461, 491 (9th Cir. 1959), cert. denied 361 U. S. 884 (1959).

<sup>12</sup> "Every party . . . shall have the right of due notice, cross-examination, presentation of evidence, objection, motion, argument and all other rights essential to a fair hearing."

[fol. 63] In making the disputed ruling, the hearing examiner stated:

"... I am not going to permit you to call any further dealer witnesses to testify in the same manner as the past dealers have testified."

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"... It seems to me that I have heard all of that kind of testimony that I need to hear. In fact, a lot of the testimony that we have heard has been cumulative. I certainly don't want to listen to any more of the same kind of testimony...."

It is obvious from the ruling complained of that the hearing examiner took into consideration the probability that respondent could well call a great many more retailers who would testify along lines substantially similar to the testimony of previous dealer witnesses, but that this particular line of testimony would not gain in probative worth as far as he was concerned by virtue of repetition. An examination of the testimony of respondent's thirty-six dealer witnesses convinces us that the examiner had ample opportunity to properly evaluate this evidence and that he rightly concluded that pyramiding additional testimony of this nature would not aid him in resolving the issues presented.

The examiner who has heard the witnesses must have the discretion to prohibit cumulative testimony on those points where he is satisfied that the issues have been thoroughly presented and that additional evidence of a cumulative nature would not assist him in arriving at the truth. Moreover, "... It has never been supposed that a party has an absolute right to force upon an unwilling tribunal an unending and superfluous mass of testimony limited only by his own judgment or whim. . . ."<sup>13</sup> The principle that the extent to which cumulative evidence will be received rests within the sound discretion of the trial court is well

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<sup>13</sup> VI. Wigmore, *"A Treatise on the Anglo-American System of Evidence in Trials at Common Law"*, Section 1907, 3rd Edition, 1940.

established.<sup>14</sup> Were it otherwise, neither the Commis-[fol. 64] sion nor the hearing examiner would be able to dispatch the business before them.

Respondent further argues that the examiner wrongly construed the documentary evidence as proof of enforcement of the restrictive provision when in fact many of the statements therein reflected only the concern of Brown's manager or field man for inventory situations wherein a retailer had too many overlapping patterns or styles or was carrying too many lines of shoes. Respondent argues that the principle of line concentration, viz., concentrating on one brand line of shoes in a given price range and thus avoiding conflicting lines, which increase inventory and duplicate patterns without bringing in additional sales, is a principle of good shoe retailing.

An examination of the field men's reports and the memoranda of their superiors convinces us that while respondent's employees may well have been concerned about the inventory situation of certain franchise stores, their altruism in this respect was not unalloyed and that the overriding concern was the elimination of competitor's conflicting lines and concomitantly promoting an increase in the volume of purchases from Brown.

We need not concern ourselves here with the arguments of respondent and counsel supporting the complaint about the intrinsic economic merits of line concentration against the advantages of selecting only the best items from several lines in the same price and style ranges. We suspect that the validity of the principle may vary with the individual situation of the particular retailer.

The economic justification, if any, of line concentration is irrelevant to the issues presented to us here. While line concentration itself may or may not be economically justifiable, there is no economic justification for making the adherence to this doctrine the subject of agreement between buyer and seller and enforcing the agreement to the latter's advantage.

We are here concerned with the question of whether the

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<sup>14</sup> See *Suhay et al. v. United States*, 95 F. 2d 890, 894 (10th Cir. 1938), cert. denied 304 U. S. 580 (1938); *Hauge v. United States*, 276 Fed. 111, 113 (9th Cir. 1921).

franchise plan operates to foreclose Brown's competitors from a segment of the market. If the operation of the franchise plan is, in fact, an illegal restraint of trade, its reasonableness may not be justified on economic or other grounds.<sup>15</sup> The short run advantage, if any, to respondent's franchise dealers of systematic application of the principle at the urging of respondent because of their membership in the franchise program cannot outweigh the long range interest of the community in the removal of restraints on competition.<sup>16</sup>

Respondent, by incorporating its insistence on line concentration (on Brown products) as a basic tenet of its franchise program, has achieved a measure of control over the purchasing operations of the dealers under that program. Respondent's basic mechanism for achieving such control and influencing the purchasing decisions of its franchise stores are the detailed reports on inventory, purchases, etc., to be submitted to respondent's franchise division or field men for their information, analysis, and suggestions, as well as the conferences between the retailers and field men on the inventory situation and future purchases.

The record demonstrates that the retailer's prime motivation for joining and staying in the franchise program was the benefits and services available to him as a franchise dealer. These benefits have been fully described in the initial decision and that task need not be duplicated here.<sup>17</sup> Not every dealer utilized all of the benefits or services available, but it is apparent that the services collectively achieved the effect desired by Brown, namely, attracting

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<sup>15</sup> See *Sandura Company*, Docket 7042 (1962).

<sup>16</sup> See *Standard Oil Co. of California et al. v. United States*, 337 U. S. 293, 309 (1949).

<sup>17</sup> "Among the benefits and services which a dealer will receive by being on the franchise plan are: architectural plans, service of a field representative, merchandising records, retail sales training program, accounting system, national and regional meetings, and group purchasing of insurance, rubber footwear, and display material." (Initial Decision, Paragraph 13.) See also paragraphs 14-21 of the examiner's findings.

retailers to the program and inducing them to comply with its requirements.

Respondent apparently contends that the franchise program is inherently lawful and in support of that contention [fol. 66] cites *Federal Trade Commission v. Sinclair Refining Company*,<sup>18</sup> and *The Timken Roller Bearing Company v. Federal Trade Commission*.<sup>19</sup> In our view, however, neither precedent supports the position of respondent. Both the *Timken* and *Sinclair* cases turned on factors not applicable to the instant proceeding. While it is true that in *Sinclair* the gasoline dealer could purchase respondent's products with or without the equipment subject to the restrictive lease and that in the instant case a retailer may purchase Brown's products irrespective of his membership in the franchise plan, the restrictions attendant on the franchise program are considerably more far-reaching than the arrangements upheld in *Sinclair*. In *Sinclair*, the agreement only purported to limit the gasoline which could be dispensed through the pumps leased by respondent, the dealer being free to secure additional equipment through which he might dispense whatever gasoline he desired. On these facts, the Court held that Sinclair's leases did not undertake to limit the lessee's right to use or deal in the goods of a competitor of Sinclair.

In this case, Brown's franchise dealers are expressly prohibited from purchasing lines of shoes conflicting with those of respondent and are required to concentrate on respondent's products; the prohibition extending to the franchisee's entire business as long as he is under the program. Under the terms of the restrictive provision under consideration here, the dealer, unlike the gasoline dealer in *Sinclair*, is foreclosed from exercising his own judgment as to the purchases he may make from his suppliers' competitors.<sup>20</sup> In *Sinclair*, the Court further found that limiting

<sup>18</sup> 261 U. S. 463 (1923).

<sup>19</sup> 299 F. 2d 839 (6th Cir. 1962), cert. denied 371 U. S. 861 (1962).

<sup>20</sup> The Supreme Court in subsequently analyzing the import of *Sinclair* held:

"... there is marked difference between a contract which confines an entire retail outlet to the sale of a

single brand and a contract which merely confines the use of a dispensing mechanism to a single brand. . . ." *Standard Oil Co. of California et al. v. United States*, supra, note 16, at p. 304, n. 6.

the leased equipment to the sale of Sinclair fuel protected the integrity of the Sinclair brand from possible debasement through the sale of inferior fuels. The franchise program cannot be justified on such grounds. The analogy advanced by respondent is neither relevant nor appropriate and does not support the conclusion that somehow the Brown franchise program is inherently lawful.

Respondent cites the *Timken* case<sup>21</sup> in support of the assertion that "its program of giving benefits and services to shoe retailer customers who concentrate on Brown brand lines is entirely lawful." Specifically, respondent relies upon the holding by the court that a manufacturer is not prohibited from selecting dealers who will devote their energies to his products nor compelled to retain dealers with divided loyalties and that the seller has the right to select his own customers. The rule in *Timken*, on which respondent relies, predicated on the finding that no agreement between respondent and its dealers had been shown is not applicable to the circumstances of this record. In the instant case, as heretofore noted, the evidence demonstrates agreements and understandings between Brown and its franchise holders expressly prohibiting the latter from purchasing lines conflicting with those of respondent.

The examiner's holding that the franchise plan was a major factor in foreclosing markets to competitors of respondent is supported by the record. In disputing this finding, respondent directs our attention to fragments of the testimony of representatives of its competitors and to the statements of its retailer witnesses in order to rebut the inferences which must be drawn from the operation of the plan as a whole. We have already noted that the terms of the restrictive proviso prohibiting the purchase of conflicting lines and demanding concentration on Brown products was part of the understanding between respondent and the retailers of the franchise plan, which by October 1961,

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<sup>21</sup> Supra, note 19.



numbered 766 stores, whether they had signed a written agreement or not. We have also noted the activity of respondent's officials and employees in enforcing this under-[fol. 68] standing. The record is indisputable that franchisees have been expelled from the program for handling lines conflicting with those of respondent. In short, the record demonstrates that the restrictive proviso under consideration here has been enforced. The fact that the restrictive understanding between Brown and its franchisees has been effectively enforced is documented by the testimony of Aarol C. Fleener, Brown's vice-president, in *United States v. Brown Shoe Company, et al.*,<sup>22</sup> that on an over-all basis Brown franchise dealers' sales of shoes purchased from respondent would constitute 75% of their total sales. This percentage, according to the witness, in the case of individual stores may vary from 60 to a high of 95%. Moreover, the extent to which competitors' conflicting lines are excluded from the franchise dealers' shelves is undoubtedly higher than these figures indicate, for this witness also stated that purchases from respondent's competitors in individual instances would be dictated by a need for either higher or lower price shoes than those made by respondent.

The foregoing summary of the facts establishing that conflicting lines of competitors are excluded by virtue of the enforcement of the terms of the restrictive proviso in the franchise agreement, and that such enforcement of the proviso was substantially effective, is sufficient to support the examiner's finding that respondent's competitors are foreclosed from selling to the market represented by the franchise dealers. Respondent's further contention that its competitors are not foreclosed because franchise holders are free to leave the plan without restriction is without merit; this proceeding, of course, is concerned with the foreclosure arising with respect to those retailers under the plan. While the record does indicate some attrition in the membership of the plan, we are satisfied that, on the whole, the relationship between Brown and its franchisees is a reasonably stable one.

The examiner, in making this finding, also properly re-

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<sup>22</sup> Supra, note 5 (This testimony is incorporated in the record as CX 118.)

lied on the testimony of six representatives of respondent's [fol. 69] competitors who corroborated the necessary inference from the very nature of the Brown franchise program and its operation that the inevitable occurred, namely, that for practical purposes they were foreclosed from selling to the Brown franchise holders. Respondent attacks the testimony of these six representatives as hearsay and speculation on the part of obviously biased witnesses. The question of bias on the part of these witnesses is, of course, best resolved by the examiner who heard them and observed their demeanor. The record does not suggest that he abused his discretion in this respect. Further, the fact that the witnesses' knowledge as to loss of sales or difficulty of making sales to retailers under respondent's franchise plan was largely derived from reports of their salesmen does not rob the evidence of probative value.<sup>23</sup> Obviously, this is the type of knowledge upon which businessmen must rely if they are to conduct their business. In fact, the record shows that Brown's competitors utilized this knowledge in formulating sales policy, namely, the determination on the part of some not to actively solicit Brown franchise stores because they were convinced this constituted a waste of sales effort. Since it is apparent that the witnesses themselves relied on this knowledge in their conduct of the business, it is sufficiently trustworthy for consideration by the examiner and the Commission in resolving the issues presented.

The record, moreover, demonstrates specific losses of sales by other shoe manufacturers traceable to the operation of the franchise plan, as shown by the following examples documented by sales data from Brown's competitors:

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<sup>23</sup> Certain of the witnesses who experienced personal rebuffs from franchise dealers were, of course, also testifying from first hand knowledge.

[col. 70]

Franchise Shoe Store	Date It Joined Plan	Name of Competitor	Competitors' Sales to Franchise Store	Total Pairs of Shoes
Fisher Shoe Store, Plymouth, Mich. <sup>22</sup>	12/17/52	Juvenile Shoe Co.	1951	1,224
			1952	1,530
			1953	246
			1954	240
			1955	252
			1956	381
			1957	228
			1958	188
			1959	314 <sup>23</sup>
Franchise Store	Date It Joined Plan	Name of Competitor	Competitors' Sales to Franchise Store	Dollar Volume
Blynn's Shoe Stores, Inc., Pittsburgh, Pa.	2/27/59	Weyenberg Shoe Co.	1957 <sup>24</sup>	636
			1958	2,782
			1959	376
			1960	.....
Gryder Co., Bloxi, Miss.	5/11/55	Weyenberg Shoe Co.	1951	1,581
			1952	5,803
			1953	8,388
			1954	3,219
			1955	428
			1956	186
Meyers Shoe Store, Watertown, Wisc.	8/ 2/56	Leverenz Shoe Company	1953	397.30
			1954	1316.10
			1955	2399.12
			1956	886.25
			1957	.....

<sup>22</sup> The Vice-President of the Juvenile Shoe Co. testified that the owner of this store advised him that purchases would be curtailed because of Fisher's participation in the franchise program.

<sup>23</sup> Commencing with 1953, the majority of sales were of the "short" Clinic line. E. g. Out of 246 pairs sold in 1953, 234 were Clinic.

<sup>24</sup> New account November 1957.

The fact that some representatives of Brown's competitors erred in their testimony relating to certain accounts to whom they allegedly lost sales because of the operation of the franchise plan, or that certain of Brown's dealers may have withheld purchases from Brown's competitors for reasons other than the existence of the franchise agreement, does not significantly detract from the force of this evidence. The record, as we have noted, does show concrete examples of such losses, but more significant is the testimony of these witnesses on the over-all impact of respondent's program and similar programs of other manufacturers on their sales opportunities generally.

Respondent, conceding that its franchisees concentrated on its lines, directs our attention to the testimony of

[fol. 71] certain dealers to the effect that their choice to enter the franchise program was governed by the quality and performance of respondent's product, and contends further, in effect, that the decision to concentrate was, therefore, a voluntary choice, quiet unlike the situation where the manufacturer prohibits the purchase of competitor's goods. We are not persuaded. Respondent glosses over the fact that whatever a dealer's reasons may have been for entering the program, once he became a participant he was subject to the agreement or understanding requiring him to refrain from purchasing a competitor's conflicting lines and to concentrate on respondent's products. The record is plain that whatever the merit of its products, respondent added to its competitive arsenal the franchise plan embodying restrictions, which necessarily foreclosed competitors from effectively selling to the select group of retailers under that program.

Respondent also directs our attention to its "Outside Line Survey" as conclusive proof of the fact that Brown's competitors are not foreclosed from selling to retailers on the franchise plan. The survey, according to respondent, demonstrates that approximately five out of six franchise stores carried at least one conflicting line, while many carried two or more. The hearing examiner's analysis of this evidence agrees with respondent's contention to the extent of finding that five out of six of respondent's franchisees did carry at least one line competing to some extent with a Brown line. However, the examiner's other findings pertinent to the survey data puts this evidence in its proper context and precludes the inference which respondent urges on us on the basis of the "Outside Line Survey". The following findings of the examiner are crucial on this point:

"Respondent also contends that most franchise holders carry other lines, some of which are conflicting, and that this shows a lack of effectiveness of any restrictions if any there be. Most of the important conflicting lines carried by the franchise holders are short lines of specialty shoes, such as Clinics (primarily for nurses) and Hush Puppies (loafers), which are condoned, . . ." (Initial Decision, Paragraph 40).

[fol. 72] and

"... Over the years most of these dealers have learned that respondent will condone some duplication of lines, particularly if the outside line is a short line or a specialty line or if the real volume is in respondent's lines, because five out of six of them carry at least one line that competes to some extent with a Brown line. There is a point beyond which outside lines will not be tolerated by Brown, and it is believed that generally the dealers know what it is" (Initial Decision, Paragraph 35).

Significantly, respondent, although taking exception to other findings in paragraphs 35 and 40 of the initial decision, has not taken exception to the excerpts quoted above. We may take these findings as undisputed, therefore. Our own review of the evidence, moreover, persuades us that the findings of the examiner are amply supported by the record. For example, J. R. Johnston, the manager of Brown's franchise program, under whose direction and supervision the survey was made, testified that a franchisee might simply be carrying a few patterns of a conflicting line and yet be listed by the survey as carrying a conflicting line. This witness further stated that even in those instances where only certain patterns in a competitor's line conflicted with respondent's shoes, if the reporting retailer carried any pattern in the line, he would be recorded as carrying a conflicting line. This witness conceded that the overlap in the Brown line and the competitor's line might extend only over a small part of either line, that is, the higher price shoes of one and the lower price shoes of the other, and yet still be considered as conflicting lines for the purposes of the survey. Of particular significance in evaluating the probative worth of this data is the further fact that the survey does not disclose the volume either in pairs or dollars of purchases of conflicting lines by the reporting franchisees; yet the record shows that the sales of competitors, whose representatives testified in this proceeding, to certain franchisees were minimal.

In the light of the examiner's findings, therefore, the "Outside Line Survey" does not demonstrate, conclusively or otherwise, that Brown's competitors were not fore-

[fol. 73] closed, as a practical matter, from selling to retailers under the Brown franchise plan; nor does it rebut the other evidence of record clearly indicating that respondent has effectively restricted access to the market represented by its franchisees to vendors of conflicting lines.

In short, from our review of the record, we find that respondent's operation of the franchise plan, which has effectively foreclosed its competitors from selling to a significant number of retail shoe stores, constitutes an unfair trade practice under Section 5 of the Federal Trade Commission Act. Respondent's practice of conditioning the benefits of membership in the plan to adherence to the restrictive terms of the franchise agreement for the purpose of foreclosing other manufacturers from selling to its franchisees is akin to the operation of tying clauses generally held as inherently anticompetitive.

Brown, on the other hand, contends that the legality or illegality of its franchise plan may be determined only after an examination of the competitive impact of the plan throughout the nation. Brown further argues that the franchise plan involves only an insubstantial share of the national market either in terms of shoes sold or number of retail outlets involved. In this connection, respondent points out that the shoes which it sells to its franchise holders constitute less than one per cent of shoe sales nationally and further argues that the same conclusion must be reached after comparison of the 766 stores under the Brown franchise plan in October of 1961 against either the 100,000 retail outlets in the country which sold shoes in 1958 or the 70,000 stores within that total classified as retail shoe outlets. Respondent concedes that the total number of outlets selling shoes included cobbler shops, drug stores, and other outlets having a limited selection of shoes or which carried few shoes in relation to their total inventory. The proper comparison, under respondent's argument, must therefore relate the number of Brown franchise accounts to the 70,000 retailers classified as retail shoe outlets. The stores under the franchise plan constitute approximately one per cent of that figure.

In making the argument that the amount of commerce involved in the franchise plan is not substantial in the [fol. 74] context of the nation as a whole, Brown relies heav-



ily on *Tampa Electric Co. v. Nashville Coal Co. et al.*,<sup>27</sup> and *Rural Gas Service, Inc.*<sup>28</sup> In effect, respondent urges us to apply, in a proceeding under Section 5 of the Federal Trade Commission Act, the test of illegality applicable to Section 3 of the Clayton Act to practices not coming within the narrow restraint encompassed by that statute. The Commission recently rejected a similar argument in *Luria Brothers and Company, Inc., et al.*<sup>29</sup> Moreover, neither case supports the quantitative insubstantiality rule Brown urges us to follow. Certainly, it would not be appropriate to promulgate a higher standard of illegality for proceedings under Section 5 of the Federal Trade Commission Act than for actions under the Clayton Act, at the urging of respondent, when the former Act was designed "... to stop in their incipency acts and practices which, when full blown, would violate [the Clayton Act] ..."<sup>30</sup>

If respondent's argument were material to the issue presented by Count I of this complaint, it should be weighed in the light of the holding of the Supreme Court in *Brown Shoe Co., Inc. v. United States*.<sup>31</sup> There the Court, in considering the vertical aspects of an acquisition, found the probability of a substantial lessening of competition despite the fact that Brown's sales to the acquired concern, G. R. Kinney Company, Inc., constituted less than one per cent of shoe sales nationally after the acquisition. Holding that the market foreclosure demonstrated was neither of *de minimis* nor monopoly proportions, the Court ruled that in such cases the percentage of the market foreclosed by the vertical arrangement cannot itself be decisive and that it was, therefore, necessary to examine the various economic and historical factors in the relevant market to make the determination of whether the supplier-customer relationship is the type of arrangement which Congress sought to proscribe.<sup>32</sup> Factually there is a close parallel between this pro-

<sup>27</sup> 365 U. S. 320 (1961).

<sup>28</sup> Docket 7065 (1961).

<sup>29</sup> Docket 6156 (1962).

<sup>30</sup> *Federal Trade Commission v. Motion Picture Advertising Service Co., Inc.*, 344 U. S. 392, 394 (1953).

<sup>31</sup> 370 U. S. 294 (1962).

<sup>32</sup> *Id.*, at p. 329.

[fol. 75] ceeding and the merger action involving Brown's acquisition of the G. R. Kinney Company.<sup>33</sup>

We have found that Brown's operation of the franchise plan constitutes an unfair trade practice violative of Section 5 of the Federal Trade Commission Act. We conclude, therefore, that Count I of the complaint has been sustained. Moreover, an examination of the market facts of the shoe industry, as developed in this record in the light of the *Brown Shoe* decision,<sup>34</sup> persuades us that the prospective competitive impact of the franchise program is such that the standards of illegality under Section 3 and Section 7 of the Clayton Act, as amended, have been met.

We recognize that a consideration of the economic context in which a challenged act or practice takes place of the nature pursued by the Supreme Court in *Brown Shoe*,<sup>35</sup> is primarily germane to a determination of legality or illegality under the Clayton Act. However, an important question remaining to be resolved under Count I is the nature and scope of the remedy to be applied. Economic factors affecting the shoe industry have a direct bearing and provide a significant guide in this respect. We turn now to a consideration of the market facts of the shoe industry for that purpose.

The structure of the shoe industry is significant. Although there are a large number of shoe manufacturers, a few companies occupy a commanding position. Of the approximately 1,000 shoe manufacturers in 1959, the top 70 manufacturers accounted for approximately 54 per cent of the shoe production in that year. The five largest manufacturers, it should be noted, produced 24 per cent of total

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<sup>33</sup> Kinney, at the time of acquisition, had about 1.2 per cent of all national retail shoe sales by dollar volume and 1.6 per cent in terms of pairs of shoes sold. Kinney, which obtained 20 per cent of its shoe requirements from its own plants, subsequent to the acquisition, purchased 7.9 per cent of its requirements from Brown, an amount obviously considerably less than one per cent of sales of all shoes sold nationally. At the time of trial, there were over 400 stores involved in Kinney's retail operation. *Id.*, at pp. 303, 304.

<sup>34</sup> *Supra*, note 31.

<sup>35</sup> *Id.*

pairs of shoes produced in 1959 and their production further constituted 45 per cent of the product manufactured by the top 70 manufacturers. Even within the group [fol. 76] of the 70 largest manufacturers there is a considerable gap between the four or five largest and the remaining manufacturers. Brown, in 1959, held third rank in shoe production and second in dollar volume.<sup>36</sup> Of particular significance, in our view, is the fact that Brown's sales of \$24,675,617 to the retailers under the franchise plan for the year ending October 31, 1959, alone exceeded by almost two million dollars the sales of the tenth ranking company in that year. This fact convincingly demonstrates the competitive disparity between respondent and the vast majority of shoe manufacturers.

The shoe retailers under the Brown franchise program are a select group, according to the testimony of respondent's own officials, and the representatives of Brown's competitors.<sup>37</sup> Only the better credit risks are permitted to

	1959 Rank	Pairs of Shoes Produced		Dollar Volume
International Shoe Co.	1	51,529,543	International Shoe Co.	\$283,260,000
Endicott Johnson Corp.	2	32,407,012	Brown Shoe Co.	276,549,164
Brown Shoe Co.	3	29,681,274	Genesco	276,422,000
Genesco	4	29,520,000	Endicott Johnson Corp.	146,099,113
Shoe Corp. of America	5	11,050,000	Shoe Corp. of America	117,100,000
Evy Footwear Co., Inc.	6	8,010,000	U. S. Shoe Corp.	50,858,933
Sudbury Footwear	10	6,200,000	Consolidated Nat'l Shoe Corp.	22,864,000
Kessler Shoe Co.	20	3,203,676	Five Star Shoe Co.	15,050,000
Vaisey-Bristol Shoe Mfg.	30	2,517,262	Mid-States Shoe Co.	10,100,000
Evangeline Shoe Co.	40	2,224,300	Williams Shoe Mfg. Co.	7,850,000
Connors-Hoffman Footwear	50	2,035,000	Laconia Shoe Co.	5,510,000
Juvenile Shoe Corp.	60	1,650,000	M. Beckerman & Sons, Inc.	4,150,000
Liberty Shoe Co.	70	1,450,000	Sham-O-Kin Shoe Corp.	2,312,000

(CX 89 A-B. These figures are exclusive of slippers and rubber, canvas, or plastic footwear).

<sup>37</sup> Respondent's descriptive brochure states that the franchise program is not available to everyone, but that the program is best fitted for the outstanding dealer or prospective dealer in each community. (CX-22U.)

[fol. 77] remain in the program. Retailers may be, and are, separated from the program because their financing is inadequate to support credit necessary for the volume of purchases expected of a franchise store, although they may have sufficient credit to purchase as a general account. The desirability of the Brown franchise plan accounts is further enhanced by the fact that while the average return of investment for independent shoe retailers generally was 11.8 per cent, Brown's franchise holders enjoyed an average 16 per cent return.

In the period 1959-1961, the number of stores enrolled under respondent's program showed an increase of approximately 12 per cent. The increase is significant, since it demonstrates an intent to expand the program at a time, when according to the testimony of the representatives of other shoe manufacturers, the prospective number of good independent retailer accounts available to independent manufacturers is diminishing.

The record evidences a trend in the shoe industry generally and on the part of respondent in particular to vertical integration by way of merger or other arrangements which naturally has a tendency to dry up otherwise available sales outlets to independent shoe manufacturers competing with Brown.

Respondent, as the hearing examiner noted, has several wholly owned subsidiary corporations engaged in the retailing or wholesaling of shoes. In this connection, the Wohl Shoe Company, one of respondent's subsidiaries, sells shoes at wholesale to approximately 3,200 customers located throughout the United States, and more significantly, in 1958, 208 of these customers operated on the "Wohl Plan." Wohl plan accounts, as the hearing examiner found, are independent retail outlets partially financed by Wohl and generally buying most of their women's shoes from Wohl. In addition, Wohl, in 1958, retailed shoes to some 457 leased department stores in 243 stores. The Regal Shoe Company, a wholly owned subsidiary of respondent, had a chain of 92 retail outlets in which its shoes were sold. Finally, the G. R. Kinney Company, whose acquisition by respondent was found illegal by the Supreme Court, in 1959 operated and owned a chain of 488 retail family shoe stores.

[fol. 78] The testimony of representatives of Brown's competitors supports the finding that the smaller manufacturers depend to a great extent on the purchases of independent shoe retailers. These witnesses stated, however, that at this time they are faced with a diminishing number of retail outlets available to them as a practical matter. According to their testimony, this trend is due in large part either to the purchase of such outlets by the larger manufacturers or to the fact that many independent retailers have come under the control of manufacturers by virtue of franchise plans or other arrangements.

The testimony of these witnesses on the subject of a trend to vertical integration in the shoe industry is graphically corroborated by respondent's own exhibits relating to the franchise plans of the International Shoe Company and of the General Shoe Company, the first and fourth ranking companies in terms of shoe production in 1959. As of 1961, International Shoe had some 1,400 independent retailers under its Merchants Service Plan, while some 317 shoe retailers were members of General Shoe's Friendly Franchise Store Plan. Most significantly, the evidence shows that in the period June 1959 to June 1961, the number of participants in the Merchants Service Plan had increased by approximately 16 per cent.

An examination of the terms of the programs of General Shoe and of International Shoe supports the testimony of the manufacturer witnesses in this proceeding that the franchise plans of the larger manufacturers generally had the effect of restricting their access to stores under such programs. Under these plans, retailers are required to feature the shoes of the sponsor and to handle the sponsor's shoes in a representative manner (Merchants Service Plan) or to purchase sufficient quantities of footwear to assure the presence of an adequate and representative stock of the sponsor's shoes in the franchise store at all times (Friendly Franchise Store Plan). Under both plans retailers are required to furnish detailed reports of their business to the sponsoring manufacturers.

Certain of Brown's competitors whose representatives testified in this proceeding make no serious effort to sell to stores under the franchise plan because of the feeling that it [fol. 79] would be a waste of time. This, in our view, is a

most significant indication of a deteriorating competitive situation, demonstrating as it does that respondent's competitors have lost the incentive to energetically strive for sales in an important segment of the market.

In assessing the need for Commission action, we must take account of the fact that historically one of the purposes of the antitrust laws, over and above purely economic considerations, has been to preserve "... an organization of industry in small units which can effectively compete with each other. . . ."<sup>38</sup> To foster the competitive position of the smaller manufacturers, Brown should be prohibited from entering into arrangements with its customers interfering with the latter's independent judgment in making purchasing decisions.

### III

#### Resale Price Maintenance

Count II of the complaint alleges that Brown engaged in unfair acts and practices violative of the Federal Trade Commission Act by requiring, or attempting to require, its customers to adhere to the arbitrary noncompetitive resale prices which it established.

Brown communicates its suggested resale prices on the shoes it manufactures in various ways. In the case of certain selling divisions, the suggested resale price is also included on the wholesale price list. The wholesale price list of the women's and girls' lines do not give the suggested resale price but dealers are advised orally of the 44 to 45 per cent markup on these shoes by Brown's salesmen; the dealers, therefore, automatically know the suggested resale price on the shoes in these lines. Most of respondent's selling divisions send schedules of suggested resale prices each season to their accounts. In addition, respondent publishes the suggested resale prices for some of its shoes in advertisements inserted in magazines of national circulation. Brown, apparently to prevent conflict among its dealers, also suggests the starting and the closing dates of sales at [fol. 80] the end of each six-month selling season.

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<sup>38</sup> *United States v. Aluminum Co. of America et al.*, 148 F. 2d 416, 429 (2nd Cir. 1945); see also *Brown Shoe Co., Inc. v. United States*, 370 U. S. 294 (1962).



Respondent, according to its vice-president and board member, Aarol C. Fleener, will attempt to dissuade a dealer from selling below suggested resale prices if other customers complain about the practice in order to prevent the loss of business to the complaining retailer.

The finding that it is Brown's policy to require adherence by its dealers to the suggested resale prices on its products is specifically supported by evidence that Brown sought to bring the pricing practices of Fraver's Shoe Store, Chambersburg, Pa., and Pomeroy's Department Store in Harrisburg, Pa., into line with its suggested retail prices at the urging of another account, their competitor, Dutrey's Shoes, with stores located in Waynesboro and Carlisle, Pa.

Brown, although it concedes that the documentary evidence in the record relating to these events raises inferences of illegal price activity on its part, contends that such inferences were completely rebutted by the testimony of its witnesses. The primary question to be resolved on respondent's exceptions is whether the hearing examiner properly weighed the conflicting evidence when he found that the allegations under Count II of the complaint had been sustained. A detailed examination of these occurrences is therefore warranted.

The record demonstrates that Brown went to considerable lengths to secure adherence to its suggested resale prices on the part of the Fraver Shoe Store in Chambersburg, Pa., at the insistence of Fraver's competitor, Dutrey's Shoes, in neighboring Carlisle. In September of 1956, after Dutrey's notification that Fraver had cut prices on respondent's merchandise, Brown's field man, George Croker, called upon Fraver pursuant to Dutrey's complaint about Fraver's pricing. Croker testified that he advised Fraver that Dutrey felt that the former was not getting the proper markup on his shoes and suggested that Fraver meet with Dutrey so that they could discuss their pricing differences among themselves. The witness, who at one point in the proceeding denied that he had asked Fraver to enter into any agreement as to the resale price of respondent's merchandise, subsequently admitted that Fraver had [fol. 81] agreed to place his regular markup on Brown's shoes. Croker's subsequent contention that he and Fraver had not discussed specific prices is therefore irrelevant.

In advising his superior, J. R. Johnston, manager of the Franchise Division, as to the results of the conference with Mr. Fraver, Croker stated in his memorandum of September 9, 1956: "Mr. Fraver has invited Dick Dutrey to call on him so that they can have an agreement on the prices on their shoes and Mr Fraver has assured me he will maintain the prices on our shoes so there will be no confliction (sic) in the future." Johnston replied, advising Croker that he was glad the situation was straightened out once and for all and that Fraver's willingness to cooperate was appreciated.

A year later, in October of 1957, Dutrey again complained to Brown about Fraver's pricing. In response to that complaint, T. R. Curtis of the Brown Franchise Division, advised Dutrey that George Croker, Brown's field representative, had been requested to "personally, contact Fraver for the purpose of having a thorough understanding that he must discontinue this practice [price cutting]." In fact, Curtis did order Croker to make the call, instructing him to discuss with Fraver "the necessity of his selling our lines at our recommended retail prices" and Croker was further instructed to advise Fraver that if the latter underpriced Brown's merchandise in the future it would be necessary for Brown to discontinue its business relationship with Fraver. Copies of these instructions were sent to representatives of three of respondent's sales divisions in Fraver's area.

Croker, testifying in behalf of respondent, stated that he took no action on the letter from Curtis because he regarded these instructions as improper. This testimony is difficult to believe, since it is clearly inconsistent with his actions of the preceding year. At any rate, it is indisputable that Croker's superior in the Franchise Division, J. R. Johnston, did not let the matter rest but took personal action. On October 16, 1957, he advised Mr. Dutrey by telegram that Fraver had agreed to abide by the suggested resale prices on all patterns of the Brown Shoe Company which he carried. Johnston's follow-up letter to the tele-[fol. 82] gram assured Dutrey that he had talked at considerable length with Fraver "on why it was necessary that we ask him to abide by our suggested retail prices and he agreed to do just that." Johnston further advised Dutrey that Fraver would remark any patterns necessary at once

and that he was confident that there would be no recurrence of such price cutting since he knew that Fraver could be counted on to keep his word.

Respondent argues, in its brief, that Johnston's testimony in this proceeding must dispel any inferences of illegality which may be drawn from respondent's memoranda concerning Fraver's pricing policy. Respondent summarizes Johnston's testimony as follows:

"Johnston testified that he did not ask Fraver for any commitment as to the prices he would charge for Brown brand shoes and that he did not ask Fraver to raise his prices (R. 418). He said that the terms 'agree' or 'agreement' used in his correspondence to Dutrey related only to the fact that Fraver 'agreed that the philosophy of raising (his) prices to afford him a reasonable markup on the basis of replacement cost made sense' (R. 418, 458-59). Johnston said that no threat to discontinue any line of shoes or anything like that, was made to Fraver (R. 420)".

The argument is without merit since this testimony cannot be construed as simply explaining the statements in these memoranda; plainly, the statements of Johnston relied upon by respondent are in irreconcilable conflict with the documentary evidence. This conclusion is inescapable after a reading of Johnston's letter of October 16, 1957, to the personnel of respondent's sales divisions arranging for the policing of Fraver's resale prices in the following terms:

"Dutrey's were very firm again in their request to have Mr. Fraver abide by our suggested retail prices and if this is not corrected once and for all it could mean losing Dutrey's account.

"May I recommend that when you call on Mr. Fraver from time to time that you check the retail prices for [fol. 83] your particular line of shoes and make sure he is abiding by your suggested prices other than during clearance sale periods."

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<sup>99</sup> Respondent's Brief, p. 47.

We are equally convinced that Fraver's testimony that he had never been asked to enter into any agreements by Johnston or that he had never entered into any agreement with respondent on pricing practices is similarly entitled to little credit. His testimony in this regard, like the statements relied upon by respondent on the part of Johnston and Croker, simply cannot be reconciled with the contemporaneous records of the events described, unbiased by the publicity or possible consequences of litigation.

Dutrey, on June 15, 1956, also complained about the advertisements of Pomeroy's, a department store in Harrisburg, Pa., promoting respondent's shoes below the suggested resale prices. In response, the manager of the Roblee Division, on June 28, contacted John Mirra, his salesman in the area, instructing him to find out why Pomeroy's ran the advertisement and pointing out further that this customer had been previously definitely advised of the program on Roblee sales. Subsequently, on August 10, the Roblee sales manager again contacted Mirra with respect to Pomeroy's advertisement of June 15, advising that Roblee shoes went on sale only twice a year, namely in July and January, and that any other sale promotion on Roblee shoes was not to be advertised as such. Significantly, Roblee's sales manager stated: "I believe you know the policy of the Company and this is definitely not allowed." These instructions concluded with the admonition to straighten the matter out with Al Schwartz of Pomeroy's so that there would be no recurrence.

Subsequently, J. R. Johnston, manager of the Franchise Division, advised Dutrey that both the Roblee salesman and sales manager had authorized him to give Dutrey their assurance that there would not be a recurrence of Pomeroy's advertisement of price cuts on Roblee shoes in advance of the sale period for Roblee shoes.

By September of 1956, Pomeroy's had again advertised Brown's shoes below the suggested resale price. In this [fol. 84] instance, both the Roblee and Buster Brown brands were involved. Another complaint by Dutrey ensued. This time the irate customer complained directly to the president of Brown, Clark R. Gamble. By letter of September 12, 1956, Mr. Gamble advised Dutrey that his complaint would be given thorough attention and that he would

hear from Brown as soon as a complete investigation had been made. A copy of this letter was sent to Tom Curtis of the Brown Franchise Division. Curtis advised respondent's president that the manager of the Roblee Division was writing Mirra, the Roblee sales representative in the area, instructing the latter to contact Pomeroy's for the purpose of getting the price cutting situation straightened out and to insure there would be no repetition.

The sales manager of Roblee did, in fact, instruct his salesman to visit Pomeroy's to correct this situation to insure there would be no recurrence of such advertising in the future. Mirra was advised that if there were a repetition of this advertising Brown would be forced to withdraw the Roblee line from the Pomeroy store in Harrisburg. The salesman of the Buster Brown Division was given similar instructions by his sales manager.

Respondent, to rebut the documentary evidence, adduced testimony from the salesmen of the Roblee and Buster Brown Divisions as well as from Messrs. Schwartz and Moscowitz, division manager of shoes for Pomeroy's and assistant division manager, respectively. Schwartz and Moscowitz both testified that they had set shoe prices independently and that no one from Brown had ever complained to them about their pricing decisions. Mirra testified that he did not discuss the June 15 advertisement complained of by Dutrey with Pomeroy's and had done absolutely nothing with respect to the instructions from the sales manager ensuing from Dutrey's first complaint. With respect to Dutrey's second complaint, Mirra admitted that he asked Pomeroy's not to advertise the sales but "just sell them [the shoes], put them on the table and sell them so I could get Mr. Dutrey off my back." Tufton, the Buster Brown salesman, testified that he might have received a memorandum from the Buster Brown sales manager on [fol. 85] Dutrey's complaint on Pomeroy's pricing but had never made any calls pursuant to such a memorandum.

This testimony is simply not credible in the light of the documentary evidence. It is inconceivable that respondent's personnel did nothing or as little as one might believe, taking their testimony at face value, since J. R. Johnston, manager of the Franchise Stores Division, stated in a letter to his field man, George Croker, referring to Pome-

roy's advertising of the Roblee and Buster Brown shoes, that "Mr. Gamble has insisted that the sales managers of these divisions get this situation straightened out and I am sure it will be." Mirra's denial that he had discussed Dutrey's first complaint with Pomeroy's cannot be reconciled with J. R. Johnston's letter of August 16, 1956, advising that both Mirra and the sales manager of the Roblee Division had authorized Johnston to give Dutrey their assurance that there would be no repetition of the Pomeroy advertising complained of. The conclusion is inescapable that either Johnston was giving Dutrey's false assurances in 1956 or that Mirra was not telling the truth in the course of his testimony in 1961. The denial by the Buster Brown salesman, Tufton, that he took any action is contradicted flatly by the memorandum of October 9, 1956, to Tom Curtis of the Franchise Division by the sales manager of Buster Brown, advising Curtis that Tufton had contacted Pomeroy's and had the account's assurance that there would be "no further cut-price promotions on our shoes at any time other than our Semi-Annual Sale periods."

The extent to which Fraver's and Pomeroy's acquiesced in respondent's attempt to suppress price competition is not altogether clear. The fact that respondent took active steps to achieve that goal is beyond dispute.

The conclusion that Brown's activities designed to suppress price competition between Dutrey and Fraver as well as Pomeroy's were not isolated instances but rather a part of respondent's general policy is supported by the testimony of Aarol C. Fleener, vice-president and board member of Brown, who admitted in this proceeding that:

[fol. 86] "Well, I will go back again; that we have to go over and see this fellow [a price cutting retailer] and try to dissuade him from that practice, because we get these protests from other people, and we have to go to it and attend to it.

"There are many, as I say, that will take place [instances of price cutting], and if it doesn't affect anything there is nothing done. But if it does affect another merchant you have got to make your peace over in that



area or you will lose several customers. So you have got to straighten it out.

. . . . .

"... if a man is a persistent price cutter on his shoes and other merchants are complaining about it, we have got to see to it that he straightens out his practice."

These admissions of the witness compel the inference that respondent followed a policy of seeking adherence to its suggest resale prices at least in those instances where price cutting was the cause of friction among its dealers, as well as the further inference that respondent must have had an agreement or understanding with its dealers that prices be maintained, going beyond a mere unilateral announcement of policy to its customers coupled with the retailer's independent decision to adhere to the prices announced. In the absence of such an understanding, respondent's dealers would have no reason for complaint to Brown and the latter would have no reason for taking steps to "straighten out" errant retailers. It strains credulity to believe that respondent would act as arbitrator in such instances in the absence of any agreement.

The hearing examiner's finding that respondent is rarely faced with problems posed by price cutting on the part of its dealers is supported by the following exchange between the examiner and Mr. Fleener:

"Hearing Examiner Creel: When you take a new outlet that hasn't been in the shoe business you wouldn't know whether he is going to be a price cutter or not?"

[fol. 87] "The Witness: Oh, yes. You talk to him quite a while before you sell him telling him what is expected of him. . . ."

Respondent contends that in making the findings complained of, the examiner took Mr. Fleener's statement out of the context of his testimony as a whole, which reflected only a fundamental concern that Brown's retailers obtain a sufficient return on their product to stay in business. While

respondent may well have been concerned with the profit picture of its dealers, it is equally true that respondents prime motivation in straightening out price cutting situations, as is apparent from this witness' testimony, was to satisfy the complaints of competitors of the price cutting retailers.

The hearing examiner's finding that respondent had a policy of seeking adherence to suggested resale prices and that it required or attempted to require agreements to that effect from its dealers is not vitiated by Mr. Fleener's disclaimers irreconcilable with the documentary evidence that Brown could not dictate the price at which its customers were to sell. When Brown, at the behest of one dealer, confers with another dealer for the purpose of persuading the latter to raise prices or to refrain from advertising cut prices except at certain sale periods, it matters not whether respondent attempts to achieve the desired end by simple persuasion, appeals to the dealer's self interest, or threats of refusal to sell.<sup>40</sup> In either event, respondent has gone beyond the mere unilateral declaration of policy coupled with a refusal to sell, sanctioned by *United States v. Colgate & Company*.<sup>41</sup> Clearly, the *Colgate* doctrine extends only to those cases where the dealer independently decides to adhere to the prices of the manufacturer; it does not sanction respondent's attempt to suppress price competition among its retailers at the request of certain of its customers. Once respondent takes steps of this nature, neither [fol. 88] its own pricing decisions nor that of its customers may be considered unilateral.<sup>42</sup>

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<sup>40</sup> "... whether an unlawful combination or conspiracy is proved is to be judged by what the parties actually did rather than by the words they used. . . ." *United States v. Parke, Davis & Co.*, 362 U. S. 29, 44 (1960).

<sup>41</sup> 250 U. S. 300 (1919).

<sup>42</sup> See *United States v. Parke, Davis & Co.*, supra, note 40, at p. 46, where the Court held:

"... It must be admitted that a seller's announcement that he will not deal with customers who do not observe his policy may tend to engender confidence in

We have already held in connection with the charges under Count I of the complaint that the fact that contemporaneous documents and the subsequent testimony of the author of the documents and other participants to the events described are in conflict does not prevent the trier of fact from resolving the conflict on the basis of the documentary evidence. The hearing examiner is, of course, in the best position to evaluate the credibility of the witnesses who have appeared before him in the light of all the evidence. An examination of the record here convinces us that his finding that respondent has illegally taken steps to suppress and eliminate price competition between its customers is amply supported by the record.

Respondent's objections that the order entered below is too vague and indefinite to be enforceable and that it does not conform to the allegations of the complaint or to the evidence are without merit. The order merely prohibits respondent from further pursuing the unfair trade practices evidenced by this record and defines Brown's obligations thereunder with clarity.

The exceptions of respondent are denied and the initial decision as modified in the accompanying order is adopted as the decision of the Commission.

Commissioner Elman, considering that the exclusive ver-

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each customer that if he complies, his competitors will also. But if a manufacturer is unwilling to rely on individual self-interest to bring about general voluntary acquiescence which has the collateral effect of eliminating price competition, and takes affirmative action to achieve uniform adherence by inducing each customer to adhere to avoid such price competition, the customer's acquiescence is not then a matter of free individual choice prompted alone by the desirability of the product. The product then comes packaged in a competition-free wrapping—a valuable feature in itself—by virtue of concerted action induced by the manufacturer. The manufacturer is thus the organizer of a price maintenance combination or conspiracy in violation of the Sherman Act. . . .”

tical arrangements shown by the record have the requisite competitive effects, *Brown Shoe Co. v. United States*, 370 [fol. 89-91] U. S. 294, 323-324 (1962), concurs in the Commission's decision and order.

Commissioners Anderson and Higginbotham did not participate in the decision of this matter.

. . . . .

[fol. 91A] BEFORE THE FEDERAL TRADE COMMISSION

**Transcript of Proceedings**

**OPENING STATEMENT BY MR. ROGAL, COUNSEL SUPPORTING  
THE COMPLAINT**

Mr. Rogal: This is a two-part complaint headed "Brown Shoe Company". Count I of the complaint charges a violation of section 5 of the Federal Trade Commission Act to Brown with respect to more than 800 of its customers who are independent shoe stores and who are referred to in the complaint, and will be referred to in this proceeding, as "Brown franchise stores;" that with respect to those more than 600 and less than 700 customers Brown has entered into a contract which requires this group of customers to deal exclusively with them to the exclusion of all other competitors producing and attempting to sell similar types of shoes.

Hearing Examiner Creel: Are you relying on a written contract for this provision?

Mr. Rogal: There is a written contract which was appended to the respondent's answer, and which will also be offered as a Commission exhibit, which contains the following provision:

"In return I will concentrate my business within the grades and price lines of shoes representing Brown Shoe Company franchises of the Brown Division and will have on lines conflicting with Brown Division brands of the Brown Shoe Company."

In answer to your question, Your Honor, we are relying upon the written contract, but we are also prepared to, and will, prove that the contract is enforced and that in the event a Brown franchise store persists in carrying or attempting to stock and sell the line of a competitor of Brown he is dropped from the Brown franchise program. However, under the program the Brown Company does not then refuse to sell the franchisee shoes. They will continue to sell him shoes, but they deny him certain services which he was granted on the condition that he deal exclusively.

\* \* \* \* \*

[fol. 91B] The amount of commerce, amount of sales, to the Brown franchise stores is in the neighborhood of 24 million dollars.

Hearing Examiner Creel: Annual sales?

Mr. Rogal: Annual sales to the approximately 700 Brown franchisees.

Counsel in support of the complaint contends that this is a substantial amount of commerce.

. . . . .

The effect of this contract and Brown operations under this contract is to foreclose and exclude competitors from a substantial segment of the shoe market—the segment represented by this approximately 24 million dollars in sales.

I feel that there is clear-cut legal precedent for Your Honor to find, without more, once it has been established, that (1), Brown is a dominant shoe company; (2), the amount of commerce of 24 million dollars is a substantial amount of commerce; and (3), that Brown does enforce these exclusive-dealing contracts with approximately 700 of its customers. Without more this is a violation of the Federal Trade Commission Act, section 5.

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[fol. 91C] OPENING STATEMENT BY MR. McROBERTS,  
COUNSEL FOR RESPONDENT

. . . . .

Mr. McRoberts: No. I think the evidence will show that, generally speaking, a typical franchise store will carry men's, women's, and children's shoes.

Hearing Examiner Creel: But you don't require it?

Mr. Roberts: But it is not absolutely required. Sometimes a Brown franchise store may carry only women's and children's shoes and still be a franchise dealer. Now, the same is true with respect to these shoes of conflicting lines.



It is true that if a dealer persists in carrying a conflicting line, a full conflicting line of shoes on occasions he will [fol. 91D] be dropped. On the other hand, there will be wait and see exactly what the evidence is to show the full of shoes but he is not dropped, and I think we will have to many instances where the dealer carries a conflicting line practice.

But the essence of this program, as we see it, is merely a program to keep the customers better satisfied, to stay customers of Brown. And whenever they cease to be satisfied they are free to leave and do leave. And other dealers sell to Brown; not only in supplementary lines but actually do sell to Brown franchise stores. Other manufacturers do in many instances in conflicting lines.

And this is a continual shifting, as you will find in any market. We just can't tie our customers down tight and keep them forever. We wish we could!

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**[fol. 92] Transcript of Testimony—March 16, 1960**

AAROL C. FLEENER, called as a witness for the Commission, testified as follows:

**Direct examination.**

Mr. Fleener is a coordinator at Brown Shoe Company. He is a Vice President and member of the Board of Directors. The term coordinator is a description of the duties. In other words, to plan the timing of supplies and shoes, the manufacturing of them, and coordinating that with the sales. His official title is Director of Marketing. This does not directly entail supervising any of the divisions or departments of Brown. Responsibility for direct supervision is not his task today.

He has been Director of Marketing since 1957. Prior to that he was Vice President in Charge of Sales of Brown Shoe Company. Each of the sales divisions and all the services attached to the selling operations were then under his supervision. The names of the sales divisions, including the 8 brand divisions are: Air Step, Naturalizer, Life Stride, Roblee, United, Capitol, Mound City, Risque, Robin Hood, Buster Brown and the Franchise Division. The witness was Vice President in Charge of Sales since 1948.

In his present position his connection with the sales departments of the company is the relationship of counsel for advice, from the standpoint of the types and styles of shoes to be stocked, the timing, the quantity, and setting it so that they are training some of the young men who are managing the respective lines of stock shoes so that they can more adequately do their job. On the basis of his background and experience with Brown, he feels that he is familiar with the sales policies which Brown has pursued, since 1957, at least.

The witness was asked what his duties were now in his present position with respect to Wohl, Regal, and Kinney division of Brown.

Mr. Burke: Mr. Examiner, I object to any evidence in relation to these divisions that Mr. Rogal has mentioned [fol. 93] as Wohl, Rogal, and any others which are not germane to the issues in this complaint. If it's just for expla-

nation only that might be one thing. But the complaint is directed to the Brown franchise stores and has nothing whatsoever to do with any other operations of the respondent.

Hearing Examiner Creel: I would like to hear from you.

Mr. Rogal: I beg to differ. The complaint is not directed only to the Brown franchise stores. Count II is specifically directed against Brown subsidiaries. The complaint also mentions and names in paragraph 2, the second subparagraph, the brand names of shoes sold by the Wohl Division.

Hearing Examiner Creel: Are these shoes sold by these division sold by retailers?

Mr. Rogal: Yes sir.

The Witness: Not by all divisions. Not by all divisions if he includes all of the divisions of the company.

By Mr. Rogal:

Q. Speaking of the Wohl Division, Mr. Fleener, they are sold to retailers?

A. They have a dual job. They sell to retailers, and they also operate leased departments and sell their shoes out of those leased departments, which would be a direct retailing job.

Hearing Examiner Creel: I will overrule the objection. You may answer.

The witness has no direct relationship with those subsidiaries other than being a member of the board of directors of Brown. There might be matters that would be discussed there, but not in great detail because the board doesn't go into those things too much at the board meetings. He is not a member of the board of directors of any of these subsidiaries. He would say the policies to be pursued by Wohl Shoe Division are established by the Brown board of directors under the direction of the executive committee.

[fol. 94] Some officers of Brown are also officers of Wohl. The Wohl division is a separate subsidiary company. Officers of both corporations, as he remembers it, are: Mr. Gamble, Mr. Hall and Mr. Griffin. Mr. Gamble is President of Brown and Chairman of the Board of Wohl. Mr. Milton Frank is a Vice President and member of the board of di-

rectors of Brown and he is President of Wohl. The position of the witness as head of marketing for Brown has very little bearing on Wohl. It has directly to do with the sales of Brown Shoe Company, as an operating company.

Commission's Exhibits 1, 90 and 91, which are Annual Reports of respondent for the fiscal years 1957, 1958 and 1959, respectively, were received in evidence, over respondent's objections of irrelevancy and immateriality.

The witness tries to keep alert regarding the market position or market penetration of Brown in the industry as a whole. There is relatively little source material available concerning market position. The National Shoe Manufacturers Association has figures that are presented to them through that organization. But there are relatively few actual facts on which the shoe industry is based. Much of it is based on the experience and know-how of what you have done in the past and what your relationship is with your customers and how you can hope to increase your business in the face of competition that exists. You, of course, have a price element in there to determine what retail price level you want to sell into and how are you can develop that, how far you want to go. For example, Brown stays in the medium-price field instead of being in the high-priced level or the low.

As to where you look to find the total market in the United States is and what the total production was, the witness answered that Government figures are compiled and then the Shoe Manufacturers, and then they have some sales information to work from. He thinks it's a sales manager's or sales bureau that gives Brown some information. Then also there is the information from which they obtain the relative strength or relative marketing power in each city and each community. Those are the figures that they work from to establish the value of a fol. 95 territory, the value of a market. They are not too authenticated, they are not too well developed, such as perhaps some other industries have. The source of this last information is Hearst's Buying Power Index. Brown's principal competitors publish their total sales. You know what the specific sales are from companies who publish their performance, and that's understood and compared.

The witness was shown Commission's Exhibits 89-A and

89-B. He had seen the two tabulations before. Based on his knowledge of the industry generally and from other sources, he considers these to be fairly accurate tabulations, insofar as figures are published. He guesses "Pairs Produced" are pretty authentic because they can come from the figures of the United Shoe Machinery Company, who have some record of the pairs that are made by each company.

Commission's Exhibits 89-A and 89-B were offered into evidence. Counsel for respondent stated for the record that the figures shown on Commission's Exhibits 89-A and 89-B with respect to the Brown Shoe Company, as indicated there for pairage or pairs produced and dollar sales for 1959, include both the dollar sales and pairage production of the G. R. Kinney Company, which is operated as a separate business with independent management under order of the United States District Court for the Eastern District of Missouri. The witness then stated that the figures on these two exhibits include the combined figures of Brown Shoe Company and its subsidiaries. Commission's Exhibits 89-A and 89-B were received in evidence over objections as to lack of relevancy.

The witness would think Commission's Exhibit 89-A represents the production of leather shoes that are made in this country. He suspects that rubbers and Keds and things of that kind are not included in this figure. The witness would estimate there are close to a thousand manufacturers in this country who make leather shoes.

Counsel for respondent here pointed out that the footnote triple asterisk in the exhibit, as to types of shoes, indicates it does not include slippers, canvas, rubber or plastic footwear.

[fol. 96] House slippers would be excluded from the exhibit. They could be of leather and have leather soles but they would still not be included here. Brown does not manufacture slippers of that type. It is pretty hard to say what types of shoes would be included in the particular list that Brown does not make. There are some companies. Wolverine, for example, who make work shoes. Brown does not make work shoes. All of that type of shoes would be in there. And in the top 70 there is a man who makes a process called "stitch-down shoes", which is a low priced shoe.

Brown does not make that kind. "Stitch down" is just the method of attaching the sole. It is a fairly low price and is not being used to any extent these days but it is used somewhat in low-priced selling children's shoes. The only difference is that it is a cheaper type and construction.

Functionally, work shoes might be the only thing included in here that Brown does not make. Brown does make a shoe that you can say is a work shoe. It is more of a gasoline station shoe. It isn't the type of shoes that are designed especially for linemen or lumberman or coal miners or people who do a specific kind of work.

The witness does not know whether he is familiar with the Leather and Shoes Blue Book of the shoe and leather industry. The National Shoe Manufacturers Association makes some figures available, and also there are some Government figures, and those are the figures they generally rely on when they are making marketing estimates. At this time Commission's Exhibits 86, 87 and 88 were offered and admitted in evidence over objections as to lack of materiality and relevancy.

Mr. Rogal: Your Honor, a note of explanation: We checked the tabulations here against some of the original census publications, and this appeared to be a shorthand way of getting this evidence in. A note of further explanation is outlined by Mr. Burke. The Bureau of the Census in its method of taking the census of shoe manufacturers is to have them report on each establishment. Thus Brown has 30 or more establishments, factories, and it will be listed, of course, 30 times. And the same with the other large companies International and General. So that the actual number of shoe and slipper manufacturers in the United States is not indicated in these exhibits.

Hearing Examiner Creel: Yes, I understand that.

At this time Commission's Exhibit 85 was offered in evidence. It is a tabulation showing United States production of footwear (except rubber) made on conventional shoe machinery each year during the period 1950 through 1959. As to what "conventional machinery" is, and roughly the proportion of shoes that are made on conventional machinery, the witness said he was not too familiar with the answer to that question because he hasn't been too close to



manufacturing figures. He could generally distinguish between conventional footwear and footwear made by the vulcanizing process. These figures are the shoes that are manufactured on what they call "conventional machinery" and then a listing of pairs made by other methods. The hose slippers, which do not have all the leather equipment and things that they have in their regular factories. The vulcanized or plastic shoes are in a vulcanizing unit, and that is a different thing. And then the rubber companies produce their footwear by a vulcanizing process. So in a general sense of saying these figures are the shoe production on the machinery, this would be the listing of them. Commission's Exhibit 85 was received in evidence.

The witness based his estimate of approximately 1,000 shoe manufacturers in the United States on the government figure listing manufacturers, not establishments. They may come to Brown through the National Shoe Manufacturers Association. The number of employees in each of the Brown factories would vary. It is in the neighborhood of probably 400 employees up to 500 to 600 per factory. As to whether a factory with less than 20 employees could be a factor in the shoe industry, the witness answered that the shoe industry is made of some shoes that are designed for some specific purpose, and they might be hand-made or high priced or they might meet a certain foot condition; and, as such, there would be a few pairs made, and [fol. 98] such a manufacturer could make and sell that product. It would not be a very substantial production or have much effect on the market, of course. As Director of Marketing, he would not consider a factory of less than 20 employees a substantial competitor to be reckoned with.

Brown Shoe company does not, from their operating position have any retail outlets. From the standpoint of subsidiaries, they own some retail outlets. These figures are from his memory and may not be entirely accurate—Wohl would operate somewhere in the neighborhood of 380 leased departments. Wohl signs the lease with a department store. It isn't the same kind of lease as you would lease a building to operate a shoe store in. It has clauses that permit either one of them to abandon the lease if they find it necessary. Whereas a shoe store would be leased for a definite period of time. These leases are in department

stores or ready-to-wear stores, with the exception of a few shore stores that they run. They have probably in round figures 16 to 17 stores and around 380 leased departments. Wohl operates the leased premises with their own employees who are paid a salary to Wohl.

As to whether the total figure of Wohl leased departments could be approximately 457, the witness said there are two ways to look at it. In some stores they will have more than one department, and for their bookkeeping they would have maybe 2 or 3 or 4 within one store. The figure he quoted from memory is the total of actual stores they would be in. If you had a store in a given department store, you could classify that as one shoe operation. For example, Famous-Barr may have several departments within their store selling shoes, but you would think of it as one shoe business when your thought of Famous-Barr. And in that sense it would be one store with maybe 2 or 3 shoe departments or maybe one. In other words, a store which had 3 or 4 outlets, he would consider that as one lease, one operation, in that community.

Mr. Burke: Your Honor, I would like to object to this line of testimony and move to strike all reference to the [fol. 99] Wohl Shoe Company. I appreciate that you have ruled adversely to me on the ground of my previous objection, which was based on the materiality and relevancy of any evidence with regard to Wohl.

As I read even Count II of the complaint, that goes beyond background information from the competitive area of the general shoe business. As I read even Count II, that is not directed against any activities being alleged as unfair competition with regard to Wohl. They talk about Brown and make certain allegations about Brown through its retail store operator customers. It doesn't refer to any outlets other than that type of retail operation.

So I respectfully submit that this type of testimony is irrelevant and immaterial and should be stricken from the record.

Hearing Examiner Creel: I don't see that it is of any great importance. What specifically do you contend that this evidence would prove?

Mr Rogal: Your Honor, the Wohl division of the Brown Shoe Company is an integral part of Brown.

Hearing Examiner Creel: Yes.

Mr. Rogal: It is referred to not as the Wohl Corporation but in all of the exhibits as the Wohl division.

Hearing Examiner Creel: I understand that. But what difference does it make whether or not Wohl has 380 or 450 retail outlets? That's what I am trying to find out.

Mr. Rogal: Well, I am trying to show the size and capacity of the Brown Shoe Company in this industry.

Hearing Examiner Creel: Yes.

Mr. Rogal: I want to——

Hearing Examiner Creel: And you have some size figures.

Mr. Rogal: Yes, sir. The number of outlets which are controlled by Brown when considered in connection with [fol. 100] the number of franchises which are restricted, according to the complaint, in their purchases. I think that it is relevant to this proceeding to learn the total number of retail outlets in connection with the total number of retail outlets in the United States that are under the control of Brown or of its Wohl division. And that's what I am attempting to do.

Now, insofar as Wohl not being considered in this complaint, paragraph 11 advises that through its sales divisions and subsidiaries Brown sells——

Hearing Examiner Creel: Oh, I agree with you on that, that Wohl is included. But what I was trying to determine was what the significance was whether or not Wohl had 380 or 457 retail outlets. That's a relatively small number compared to the number of 10,000 total outlets which somebody has said is approximately correct.

Mr. McRoberts: I think 70,000 was the figure. Your Honor.

Hearing Examiner Creel: In other words, if it was a significant part of the total I would agree with you completely. But, since it is a relatively insignificant part of the total, I just don't understand.

Mr. Rogal: Which total? I don't understand.

Hearing Examiner Creel: Of the total retail outlets in the country.

Mr. Rogal: Well, the total retail outlets in the country, Your Honor—and the retail outlet is classified as a store

selling at least 50 percent of its total sales in shoes—is approximately 22,000. That is in Commission's exhibit——

Mr. Burke: Well, may I point out that in Commission's Exhibit 88.

Mr. Rogal: —Commission's Exhibit 88, yes.

Mr. Burke: —which was offered, it shows retail outlets in the United States as totaling some 70,000 plus. A leased [fol. 101] department that has been referred to by Mr. Rogal is not an independent shoe store as such but would be classified as a retail shoe outlet in the department store classification shown in the table at the top of Commission's Exhibit 88.

Hearing Examiner Creel: All right. What is the pending question, Mr. Reporter?

Mr. Burke: It is a motion to strike.

Hearing Examiner Creel: I will overrule your motion to strike; but I will say that it is not of any great significance whether the number of outlets which Wohl has is 380 to 457.

By Mr. Rogal:

Q. How many outlets are owned by the Regal division?

Mr. Burke: Your Honor, I make the same objection on the ground of immateriality and lack of relevancy in this proceeding. Apparently we are starting off on a similar line of questioning similar to this Wohl matter.

Hearing Examiner Creel: I will overrule the objection and let him go for a while on it.

Mr. Burke: May I have a continuing objection to this line of questioning?

Hearing Examiner Creel: Yes, sir.

The witness is not currently familiar, but it is his recollection that Brown would have in the neighborhood of 90 to 92 stores under the Regal name. Kinney, as he recalls is somewhere in the neighborhood of 480.

Q. What is a Wohl plan account?

Mr. Burke: Your Honor, please, I make the same objection to lack of materiality and relevancy to any issue in this proceeding; that this line of questioning doesn't

prove or disprove any issue in this case. And we seem to be getting very far afield.

Hearing Examiner Creel: I take it, Mr. Rogal, that a Wohl plan account is something different from a Wohl retail account. Is that correct?

[fol. 102] Mr. Rogal: I think so, sir.

Hearing Examiner Creel: Overrule the objection.

The Wohl people could answer these questions better, but they have some young men that they will help get a lease and they provide him with a stock of shoes, which he pays for on some method they have of paying for it, maybe a weekly or monthly basis. They reimburse Wohl Shoe Company for the merchandise until they have got it paid up. So it is a method by which a man with not quite adequate capital to go into business can be helped to that extent and they work with him closely to make sure that he is doing all right and is successful, so that they do not lose their investment or that he doesn't lose his. The witness does not know how many Wohl plan accounts there are.

#### STIPULATION

Mr. McRoberts: Subject to objections as to the materiality and relevancy, Brown will stipulate that on May 1, 1958, there were 647 stores in the Brown franchise program. The Regal division had 92 outlets or stores. There were on that date 208 shoe dealers operating on the Wohl plan, sometimes referred to as "Wohl plan accounts."

On that date Wohl had leased departments in 243 stores. In some of those stores there were separate departments for accounting purposes; and if those separate departments be considered as separate retail outlets, which we do not think they should be considered as, the figure would be 457.

On that date Kinney had 418 outlets.

At that time there were over 70,000 stores selling shoes.

The census department at that time however, classified a shoe store as one that had over 50 percent of its gross receipts entirely from the sale of shoes. This would obviously eliminate the department stores, specialty stores, and the like, which sell a great many shoes. According to the census

figures there were some 22,000 shoe stores meeting that definition of the Census Bureau.

[fol. 103] The percentages of Brown and of the other manufacturers in relating outlets to the total number of outlets would have to be accurately computed dependent upon what kind of outlets you are talking about.

Does that give you the information?

Just to further clarify this, in the figure of 243 stores under the caption "Wohl Leased Departments," that included approximately 16 stores. The basic Wohl operation is of a leased shoe department in a department store, but Wohl did operate 16 shoe stores.

Hearing Examiner Creel: Is that stipulation agreeable, Mr. Rogal?

Mr. Rogal: That's agreeable to me; yes, sir.

The witness was asked to go down the list and when a plant is not a shoe manufacturing plant just indicate what it is, whether it is a supply plant, a warehouse, or whatever it is. Ironton, Mo. and Kenton, Tenn., are supply plants. Piedmont, Mo. is a supply plant. Gravois is a supply house. Gustine and Bingham is a shoe warehouse. Seventeenth and Lucas is Wohl's warehouse. Steelville, Mo. is a supply plant. Trenton, Ill., as a warehouse. Trenton, Tenn., is a warehouse, a supply and warehouse. The witness is not familiar with the Whitman, Mass. There are two listed, one could have been a warehouse, they are both sold. In Canada there are two listed. He would say they are factories. The remainder listed are shoe manufacturing plants, manufacturing one or more of the Brown shoes. This includes Kinney and Regal factories. Wohl doesn't have any factories. They have a supply plant, a warehouse at 17th and Lucas.

Commission's Exhibit 2 was offered in evidence. Counsel for the Commission said it is a breakdown of the sales of Brown, showing the sales of the various divisions and their relationship to the whole. Commission's Exhibit 2 was received in evidence, over objection as to lack of materiality and relevancy.

Commission's Exhibit 3 was offered in evidence. Counsel for the Commission said it is a letter from Brown Shoe [fol. 104] Company, dated June 9, 1958, to Mr. Sanger of the Federal Trade Commission, showing dollar shipments



of Brown Shoe Company, including shipments to Brown franchise stores, for the 3 year period 1955 through 1957. Commission's Exhibit 3 was received in evidence without objection.

The witness would say the shipments to the Brown franchise stores which are shown on the Exhibit, are included in the total shipments of Brown shown on the Exhibit, because they are shown as a percentage of the total. The figure of \$111 million shown as the total sales of Brown in Stipulation No. 8, on page 4 of Commission's Exhibit 121, includes the figure of approximately \$24 million also shown there as sales to Brown franchise stores.

On Commission's Exhibit 3, the net shipments of Brown shown there include the sales by Mound City and Capital in the figure of \$120 million. The Mound City and Capital divisions are sales of make-up shoes to the chains usually and big mail order houses. The total sales figure is the total of all sales of all products to all customers through Brown Shoe Company as such, which is the manufacturing and operating business. The figure does not include the retail sales of the subsidiary.

The subdivisions of the Brown division, such as Air Step, previously listed by the witness, are selling divisions within the operating company. The term Brown Division has been used to imply the operating company making the shoes and selling them, to distinguish between that and the retail subsidiaries. That would be in the making of the shoes, buying the materials, and the warehousing of the shoes to their customers. There are subdivisions within what it termed the Brown Division that are selling divisions.

Mr. Johnston is in charge of the Brown franchise division. His superior is Louis Schaefer, the Vice President in Charge of Sales. In the headquarters staff of that division are Mr. Johnston, and his assistants, Tom Curtis and a man by the name of Carroll. As to what the responsibility of Mr. Johnston is, the witness would have to more or less [fol. 105] define the function of the franchise division. He said, it is primarily to help a merchant do a better retail job. It was started some 30-odd years ago. And he has in the field a group of what we call fieldmen that have different segments of the country that combine the whole and

look after these merchants who are within the territory, to aid them in any way that they can. For example, on window trims or in records, for doing a better job. And so these fieldmen report then to Dick Johnston as to their performance in the field.

The function of the department is to help that merchant do a better merchandising job and be successful in what he has set out to do. It is over and above the normal selling procedures that we have where we have a sales force that goes out to sell a man his shoes. This group of men can be auditors from that standpoint of helping them with their figures as they need them. Or he can help them lay out a buying plan, to set up figures for certain kinds of shoes, so his money is divided out in such a way that he can do the very best retail job without having the pressure of selling attached to it. So in that sense we have helped many merchants over the past years to do a better job, and the record shows it.

Mr. Johnston is responsible for the operations of his division. Whether he has the authority to make appropriate decisions within his division is a difficult question to answer. For example, the sales department is interested in selling an account, and he is subject to the supervision of the sales head. It's good business to have good relations with your customers. And so if he had a problem to resolve he would undoubtedly confer with his superior before he made a decision on his own if it was a very important one. The routine decisions he carries out because he is operating his department.

The franchise accounts do not get any more lenient credit terms than Brown's other accounts. There is no difference. The witness said, it's a guidance program. The retailing of shoes is not a simple matter, and it takes a lot of skill to buy a group of shoes, a group of styles and bring them in the sizes, and sell them out and have enough left when he [fol. 106] gets through with his expenses and mark-downs to have a profit. And it is highly competitive. Because of that condition, and because of there being more than an adequate supply of shoes, it's a very difficult business to come out with a profit. And, so, many years ago this was conceived in our company, and over the period of years it has developed into a program that has been very beneficial,

we think, to many merchants, and it has been beneficial to our company in our relations with our customers. It is a function over and besides selling, which will help these people do a better retail job.

It goes into helping with their store or with their leases. Many a retailer is the owner, his wife is interested in it with him, and he is not too highly skilled in making deals with the landlord. So he is helped in that situation to know how much he should pay or what kind of an arrangement he should make. Because if the lease on a retail business is too high it is extremely difficult for that merchant to do a decent service job for his community. So he is helped in that sense. And Dick Johnston's fieldmen are trained. They are usually a retailer who has been successful, who he interests in coming into this work, and he is trained in the know-how of doing a good job so he gives that guidance and direction to those merchants.

The total personnel of the franchise division include the fieldmen and the three officials previously named. There are about 16 fieldmen. The stipulation indicates 682 Brown franchise dealers were being sold by Brown as of November 20, 1959.

Q. I believe the stipulation also indicates that with a certain number you have entered signed franchises and with another number you have not entered signed franchises. Is there any difference in the treatment afforded by Brown to these various accounts, whether they have a franchise signed or not?

A. No. The performance is better usually with a man who signs because he is more intent on carrying out the things that are set out and understood because if you are watching your inventory—That's the principal reason for these reports, that the man himself will know what condition he is in. And the reports are just a form that permits him to look on one sheet of paper and determine how he stands. And that's done at intervals.

Q. Well, we will get into that a little later, Mr. Fleener. Is there any difference, then, in the policy of Brown toward a man if he hasn't signed and a man who has signed?

A. If he is on the franchise program?

Q. Yes.

A. No difference.

The officer in charge of running the other divisions, such as Roblee, Pedwin, etc., is a division head whose title is Manager of his sales division. He is responsible to the head of sales, Mr. Schaefer. He would have a few people in the office who were employed to process his orders, to order the shoes from the factories and to give service to their customers in the way of credits and taking care of their orders. So the size of those divisions would vary, based upon the amount of business they do. Shoes are presented to prospective customers by sales men who have territories that are defined, and they travel and seek business within those limits. The salesmen handle only the brand of the division with which they are associated. There is a sales force for each division. If a store, Brown franchise store or otherwise, were handling 3 or 4 brands of Brown shoes, it would have 3 or 4 Brown salesmen making calls. The salesmen are compensated on a commission basis.

The witness was shown Commission's Exhibits 4 and 5 for identification. These exhibits are a list of the names under which Brown sells its brands. One brand was added to Commission's Exhibit 5. It is Smartaire, a new line added within the last year and a half. Commission's Exhibits 4 and 5 were received in evidence without objection.

The other brands of shoes shown on page 15 of Brown's Annual Report for 1959 (Commission's Exhibit 91), and not listed on Commission's Exhibits 4 and 5, are handled through subsidiaries. Brands of Wohl Shoe Company are: Jacqueline, Connie, Corelli, Marquise, Natural Poise, Petite Debs and Paris Fashion. The Kinney brands are: Educator, Enzel, Kinney's, Revette, Stuart Holmes and [fols. 108-117] Style-Craft. Regal's brand name is Regal. The rest of the brand names are brand names of Brown Shoe Company. Tread Straight is a shoe within the Buster Brown line, and the Miss America is a name within the Proper-bilt line. Proper-bilt and Miss America are girls' and children's shoes. They are not a major line. They are sub-lines.

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At this time Counsel for the Commission offered as a group, price lists and descriptive catalogs of the various Brown lines. They are numbered for identification as Com-

mission's Exhibits 6 through 21-C. Commission's Exhibits 6, 7-A through 7-R, 8, 9-A through 9-J, 10, 11-A through 11-R, 12, 13-A through 13-K, 14, 15, 16, 17-A through 17-F, 18, 19-A through 19-F, 20, and 21-A through 2-C, were received in evidence without objection.

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[fol. 118] Mr. Rogal: He knows of no estimate or compilation which would show a breakdown of sales in the average family for percentage of rubber goods and percentage [fol. 119] of sneakers. There is a set of figures that's published as to how many shoes are sold in each price range. He thinks that's put out by the Boot and Shoe Recorder. Somebody that makes the facts and figures on what is purchased yearly. It shows how many shoes are sold at each price. But as to what a retailer would do in a store, there are too many variations. He doesn't think there would be any tell-tale pattern that would be worth much after you got it.

The witness was asked what types or categories of shoes, not manufactured by Brown, a family shoe store in an average size city would stock, in order to have a complete line of shoes of all types for all members of the family. The witness stated that many family stores will find it necessary to sell a man's shoe at a higher price than Brown would make. There are individual lasts that are put in by some manufacturers who would cater to a certain foot correction or foot problem. That would be made by other manufacturers. That could be in different prices, of course. He mentioned work shoes before, and that large field Brown does not reach in spite of the fact that they may have one that might fit garage or service station men. There are plenty of low priced shoes that would be well under what Brown makes that a store would handle.

There are many different kinds of stores. A family store might be devoting itself to a level that was pretty much the price level that Brown makes, and on his dress shoes he would use a large part of their shoes. He still might find some specific shoe or some one item which he thought he would have to buy, which he would go ahead and do. A typical family shoe store stocks athletic shoes of the basketball or tennis variety, and these are bought from other people.

Many merchants do not go much into that field. For example, bowling shoes are sold largely in the bowling alleys today rather than through retailers, although retailers try to get some of them.

The vulcanized rubber sneaker shoes or canvas shoes are found in all family stores. Waterproof footwear is sold in most family shoe stores, and you could add house slippers to that. You could add many of these little shoes that are [fol. 120] made for indoor wear, that are put out by individual manufacturers, that they might want to purchase. Some of them are attached on cards and sold at a very low price: Just like slip-on types of footwear. There are many shoes style-wise in the price ranges and all that Brown would make that he would still feel that he ought to have. If Brown didn't happen to have that same item at that time, which often happens, it would mean other manufacturers' shoes going into those stores.

About the only method they have for determining what a Brown franchise dealer buys outside of Brown lines would be to know pretty much what his retail business is, and then make a guess as to how much of that was Brown's, based on Brown's shipments. The forms Brown receives are categorized as to the type of shoe, and they might not always show whether they were Brown's or the other fellows. The forms indicate that there is a place for Brown's shoes and other shoes, but they don't always report it that way. It is not always a basis on which you could rely. They just don't fill out the form a number of times. They are made out to varying degrees of completeness. As an expert in the shoe marketing field he would not have any opinion or any idea as to what percentage of the total sales of a family type shoe store would be involved in work shoes, waterproof footwear, canvas shoes and slippers not manufactured by Brown. Brown would know how much they bought from Brown compared to what they were doing in total. In other words, they might be doing 60 percent on Brown's shoes, 75 percent, or 85 percent. Brown has an idea to that, based on his total business against what he buys from Brown. But to decide how much of that specifically falls into each category, he doesn't believe Brown has that information. At least, he has never seen it.

The witness testified in the merger case, United States



versus Brown. The statements that he made there are true to the best of his knowledge and information.

Mr. Rogal: Your Honor, in order to shorten the interrogation of Mr. Fleener, it was agreed between counsel that part of his testimony in the U. S. versus Brown case would [fol. 121] be stipulated into evidence. This is not his complete testimony; just part of his testimony. And it has been marked for identification as Exhibits 118-A through 118-Z. I am going to offer this in evidence at this time. I understand that Mr. Burke has a voir dire examination to be made with respect to at least one page of this.

Hearing Examiner Creel: Very well.

Mr. Burke: We have no objection. We understand that if Mr. Fleener were asked the same questions that were propounded to him in the case Mr. Rogal referred to his answers would be the same as recorded in that case, and we have no objection. However, as Mr. Rogal indicated, for completeness, because it does cover some matters that have not been covered in his direct testimony, we may want to ask some questions for clarification.

Hearing Examiner Creel: All right. Do you want to do that now?

Mr. Burke: No, it won't be necessary. We will wait until he concludes because maybe Mr. Rogal will ask the questions and it won't be necessary.

Thereupon Commission's Exhibits 118-A through 118-Z were received in evidence without objection.

#### Cross-examination.

The witness recalls a question asked him about loans to franchise dealers generally, in the testimony that he gave in the merger case (Commission's Exhibits 118-A through 118-Z). He recalls answering the question as to what form that loan took so far as the terms of the loan, that it was a demand note. There are, dates attached to that note as to the terms of payment. That is the basis of the understanding between Brown and the parties who borrowed the money as to the dates on which he is to repay them. So when they call it a demand note, it's not strictly a demand note. Those notes are not called on demand. These loans are made from time to time to independent retailers who are on

the franchise program as well as those who are not. If a [fols. 122-127] person who is on the franchise program and has a loan outstanding goes off the franchise program, this does not affect his loan a bit. The loan is not called. It is paid off based on the original agreement. The original agreement does not provide that the loan be called in the event the franchise is cancelled.

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[fol. 128] J. R. JOHNSTON, called as a witness for the Commission, testified as follows:

Direct examination.

The witness usually signs his name as "Dick" to most of the Brown franchise dealers in correspondence with them, or in the case of Brown field representatives he uses the signature of Dick Johnston, his middle name being Richard. [fol. 129] He is manager of the franchise stores division of Brown Shoe Company. His duties are to employ and supervise capable field representatives who contact independent retailers who operate their business on what is known as the Brown franchise stores program, and supervise much of their activities, as well as employ and supervise the activities, of those who are under his supervision in the St. Louis office in the Brown franchise stores division.

His relationship with the brand divisions of Brown, which are called selling divisions, is purely on the basis of consulting with them on any subject that might be relatively important to his division or franchise stores or reviewing their line with them just for his own education as to design and style of line from season to season. He has no control whatsoever over the actions of any of those divisions. As to whether the sales manager of those divisions would be considered about on a par with him within the company ranking, it would depend upon your interpretation. His division does not sell merchandise. They sell ideas, so to speak, and those divisions sell merchandise. He doesn't know just how his company would classify situa-

tions like that. He is directly responsible to Lewis J. Schaefer, the vice president in charge of sales.

Tom Curtis is an associate of the witness. He has the title of assistant to the franchise division. He has long been with the witness. Tom Curtis has been in his present position approximately 6 years and prior to that, many years with Brown in a different capacity. His duties are many. Specifically, they would be to draw up and send out periodically to the franchise stores suggested ideas on merchandising, preparation for clearance sales, preparation for peak seasonal periods of the year, regarding the sales staffs of franchise dealers; to correspond with Brown fieldmen, pretty much from an acknowledgment standpoint, as a result of the information that they give the division as a result of a call they make to a dealer periodically. His duties also include assisting their fieldmen with audits and inventories of stores when they make that request of the division. Also working up at the request of dealers, financial guides that would help them in the guidance of their business financially. As to whether he acts for the witness in his absence, depending upon the degree, yes, Curtis acts in his absence. There are some decisions that come up periodically that Curtis would postpone, or if it is necessary to make a decision before the witness might return, consult with his superiors in his absence.

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Lou Carroll is an employee of the franchise stores division in the St. Louis office. Among many of Mr. Carroll's duties the witness mentioned some of the ones that he feels are most important. They vary. Mr. Carroll acknowledges correspondence with the field representatives regarding prospects that they might be working on who are interested in operating their business on the franchise program. He also keeps a record and is charged with the correspondence that involves those stores which use what is known as a window display service that Brown provides franchise dealers who are interested in that service. He is also responsible for keeping abreast with a program such as a store might be being built, a new store, from the standpoint of handling orders that come in for that store, to see that

they are turned over to the various divisions for processing and handling. He makes a sincere effort to see that the divisions process the orders for shipping purposes, and makes an effort to see that its shoes are delivered to the dealer on time for his opening.

There are three men in the office staff of the franchise division, and Mr. Carroll would be third in command. The headquarters staff of the franchise division are the witness, Mr. Curtis and Mr. Carroll. Walter Johnson is general sales manager of the United Men's Division. Bob Lapin is a division credit manager for the company, for the Brown division of Brown Shoe Company. Brown has a number of division credit men and he is one of those. He is not the credit manager of the company. Mr. Lapin handles the credit of the great percentage of Brown franchise dealers.

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[fol. 131] Mr. T. R. Forgan is a field representative in the franchise stores division. He has been in that position approximately 5 years. Robert Taylor is a field representative in the franchise stores division. Max Holt is also a field representative in the franchise stores division.

As to when the Brown franchise division program was started, from what the witness has been told by others who preceded him it was started approximately 1921 or 1922. He has been head of the division for 7 years, since 1953. Before that he was assistant to the division head for one year. He was not with Brown before that. The witness would say there had been basically no material changes in the way the program is operated during the period of time that he has been with the division. The field representative signs the franchise accounts in the first instance.

At this time Commission's Exhibits 22, 23-A through 23-Z-24, 24-A through 24Z-33, and 25-A through 25-C, were offered and received in evidence without objection.

The witness said the function of Commission's Exhibit 25, which is the Brown franchise agreement, is to give the dealer an idea of what he might expect from Brown Shoe Company in the way of our providing him with these systems and services, etc., and also what we, in turn, would ask of the dealer who decides to operate his business on the franchise stores program. The first page of the agreement,

Commission's Exhibit 25-B, are the tangible and intangible [fol. 132] benefits, the services that the retailer might expect from Brown Shoe Company. The second page of the agreement, Commission's Exhibit 25-C, would be what Brown would ask the dealer in return for the tangible and intangible benefits of the services as outlined on 25-B.

The witness' attention was called to the first service listed on the Exhibit, architectural plans. As to what that entails, the witness said they have an architectural department that will completely design a new store or draw plans to remodel an existing store in its entirety for a dealer who might need those services. In some states, however, even when their architectural department provides complete plans, that retailer must refer those plans to some department within his state for approval before he might be permitted to proceed with these architectural plans.

The plans are complete from the ground up and from the sidewalk to the rear door, even to the details of the color schemes that are used on the walls, the carpeting to blend with the paint on the walls, the upholstery on the chairs. Just the complete design and layout of the store, including fixtures as well as the general physical plant of the store. Everything that is submitted to him is purely suggestive. They have many dealers who accept those plans and use them in their entirety because they are pleased with the plan as it is submitted to them. They have other dealers who accept the plan and make some changes, depending upon their personal likes and dislikes as to what has been laid out and suggested by the architectural division. The witness does not know the cost to Brown of drawing up these plans.

The witness has never represented that this service is worth a certain monetary value. Brown franchise stores utilize this service very much. He would have no way of knowing how many of the Brown franchise stores have used it. His only way of making the statement when he said "very much" is that as he visits stores and talks with the dealers, and the discussion comes up about the physical plant, which happens very often, he has the occasion to ask who designed the store. By and large the witness can recognize [fol. 133] the ones that were designed by the Brown people. Most often the architects visit the site and take ac-

tual measurements for a complete remodeling. As to a minor remodeling job, they might be able to do that with photographs that would be sent to them with measurements. But if it is a major remodeling job or a new store, in most all cases it's necessary for them to be right on the scene to take the specific measurements.

He would say that over the years as many as half of the franchise accounts used that service. Brown does give this architectural service to stores outside of the Brown franchise division. The witness knows this by talking with the person who heads up the architectural department in the company, and also by talking with dealers who do not operate on the franchise program who had told him that they received that service from Brown. He would say that 70 to 75 percent of the time of the architectural department is devoted to working on plans for franchise stores. He does not know the cost to Brown of this service.

Item B on the franchise agreement (Exhibit 25) describes the services of a field representative. These services and the contribution he makes to a retailer deal with most every aspect of his business. This witness was shown Stipulation No. 12, paragraph B, on page 5 of Commission's Exhibit 121. As to whether that sufficiently describes the services performed by the field representatives, the witness stated that the only thing he might add to this as a service of the field representative is that he would counsel with a prospective dealer who is considering a location, to assist him in making a survey for that location and review the lease that the landlord might submit to that man as a prospective tenant to give the prospect his opinion regarding any clauses in that lease that he would recommend the prospect go back and discuss with the landlord. That he might be able to get the landlord to maybe reconsider in behalf of that man who is the prospective tenant.

Boiling it down—and it is incorporated in this thing—the field man's services are to observe, analyze and recommend but not to dictate.

[fol. 134] Field representatives are compensated by salary and their expenses. Their remuneration is not keyed to the sales of their stores. By and large each of them has a multi-state territory. There is no specific formula that they must follow, but the witness would say the field representa-



tives will visit the stores in their territory on the average of twice a year. Other stores possibly 4 or 5 times a year depending upon the number of requests that they might get from a dealer to call on them. Depending on the nature of the work it might be necessary for them to make more than an average of two calls per year. There is no number of calls he requires them to make.

The audit mentioned in item No. 5 in the franchise contract (on Commission's Exhibit 25-B) is one of the things that is performed by the Brown franchise fieldman at the dealer's request, and on occasion where there may be a Brown Shoe Company loan involved with certain stores where Brown might request an audit periodically from those stores. As to whether the provision makes it mandatory the witness stated that there are many Brown franchise stores that they have never audited. That provision is not strictly observed.

The field representatives do not generally check inventory on every call. They will check inventories generally when they are either assisting a retailer in making out a seasonal buying and sales plan, or at the end of the year when that dealer requests an inventory and audit. Those are the specific times when he will definitely check inventory.

Field representatives are required to file a field report that is prepared in mimeographed form relative to different phases of the operation, and then they write in, in long hand generally or type it, a report of their observations and analysis and recommendation as a result of the visit that they make to a store. The witness was showed Commission's Exhibit 30-A for identification and identified this as one of the types of forms that they make their report on. As to whether the field representatives perform any of their [fol. 135] services for Brown stores other than Brown franchise stores, the witness would say that that has been done rarely. They will perform certain fieldmen's services to a person who is not presently operating on the program if he is what they consider a prospect for the program and is desirous and considering the program. The fieldman would provide certain services and functions to a limited degree until the dealer would make a decision, because there is certain work that leads up to an established

business going on to the program, on what they call a conversion, that would be necessary for the fieldman to render certain services to that store. Primarily they confine themselves, with just that exception, to the Brown franchise stores.

The witness' attention was called to items C and E on Commission's Exhibit 25-B, which deal with certain merchandising records and accounting systems. The witness was shown Commission's Exhibits 92 through 117 and asked to examine them. These are the items referred to in paragraph C and E on the franchise agreement. These business forms are given to the Brown franchisees free of charge. Brown replenishes them as he uses them. The witness does not know the cost to Brown of this phase of the program. Commission's Exhibits 92 through 105, 106-A and -B and 107 through 117 were received in evidence without objection.

As to how much money they save the average Brown franchisee by supplying these forms to him, to the knowledge of the witness there has never been a study made of that, so any figure that he would use would be purely an estimate. The witness personally never tells a prospective Brown franchisee what he will save by giving him these records. He does not know if possibly some of the fieldmen gave dealers that information. Commission's Exhibits 92 through 117, in his opinion, are the best system they know of for a family shoe store. He would say that it is very complete.

This service is given only to Brown franchise stores from the standpoint of replenishing their needs. But they will furnish other dealers samples of these forms for whatever use they want to make of them. Either broaden them [fol. 136] or shorten them or give them to any possible use that they might want to make of them. Brown does not deny any dealer samples of the forms. But they do not continue to replenish them. In other words one set of these would be provided to others as a model. They are not copyrighted.

The witness' attention was called to items 4 and 5 on the franchise agreement, Commission's Exhibit 25-C. Brown requests that the franchise store file monthly reports and maintain an accounting system, but not all of them send

monthly reports. Failure to send in monthly reports would result in nothing more than to point out the relative importance of them using the system as it is designed. But nothing further than that. Brown has never dropped people from the franchise program for failing to keep reports or to file reports and keep records, for that reason alone. There might have been a combination of reasons, and that might be one of the reasons that is included.

The purpose of the dealer sending Brown a copy of the report is that these reports are periodically analyzed, and they write the dealer on many occasions as they see certain strengths of his business and compliment him on certain phases of his business, or if they see weaknesses that might be cropping up in the business, to point those things out to him and recommend that he try to strengthen his position in certain phases of his operation, whether it be merchandising or finances or whatever the specific case might be. In addition to that, their credit department also sees the monthly report so that they know what the store's liabilities are and what position the store is in financially.

Commission's Exhibit 99 is not the report form. It is what they call their material report. It is a report that helps the retailer know his position, either once each month or twice each month, his unit sales in relation to inventory by classification. This report is not sent in to Brown. It is used, the copy in the store, for the dealer's merchandising and promotional purposes. Possibly at one time, when that report was originally designed, they requested that the stores who use it send a copy of it to Brown, but it rarely if ever got them. He thinks the stores that used them, used [fol. 137] for for their purpose for merchandising and promotional use. It was pointed out that the reverse side states that it should be filled out in duplicate and mailed to the franchise fieldman at once. The witness stated this is not followed. In fact they wish they could get more stores to use that form than are using them. They would be better merchants if some of them used it.

Commission's Exhibit 111 is the monthly report that is prepared at the close of each month as a result of postings that are made to this from the daily postings of the invoice register and daily sales register and other segments of the bookkeeping system. This side of the report deals with dol-

lars. The other side of the report deals with pairs. One of the great advantages of a dealer using this system is that at the close of each month, as he accumulates his information to see what his position is, he has to look only at one sheet of paper to see his total financial picture of his business. And on the other side of that, he reviews his performance for that month and cumulatively in the year to date, and the comparative figures for the preceding year in relation to pairage, and he doesn't have to go to so many different places to accumulate information to see his performance and position. And that's one of the great advantages of this report form, Commission's Exhibit 111. A copy of it is sent to Brown and the dealer keeps the original for his own analytical purposes. It is referred to for credit purposes by the credit department. Commission's Exhibit 111 correlates with the remainder of the accounting system so that if you have maintained the accounting system then you can fill out this report. One is designed to compliment the other.

Commission's Exhibits for Identification 26 and 27-A through 27-D were offered in evidence. The offer of Commission's Exhibit 26 was thereafter withdrawn. Commission's Exhibit 27-A through -D was received in evidence without objection. The witness was asked to read the last paragraph on Exhibit 27-A, which is an interrogatory answer from the *United States v. Brown Shoe Company* [fol. 138] case. He was asked whether he at any time represented that the savings which would accrue to the Brown franchise by using group fire insurance would be approximately 25 percent.

Mr. Burke: Mr. Examiner, I think, in fairness to the witness and in answer to the question, inasmuch as he hasn't seen this document, it covers a period, by its own statement at the top of the page, of November 1, 1949, to October 31, 1955. I believe that's what the answers are directed to in here.

Hearing Examiner Creel: All right. Go ahead.

The witness stated that he has known there would be a saving to the retailer. However, as it was explained to him, the cost of insurance in a particular town, or the rate, depends upon the type of building that the store is going to occupy or its distance from a firehouse or this or that.

Their dealers' rates or costs are not the same. So he has never been in a position to know what degree of savings it amounted to for one dealer and for another dealer, simply because the premium is established by the age and all of that building, and the handling of that insurance is handled through an agent. It is not handled through Brown Shoe Company. The Brown franchisees save money by using this group program, but the witness doesn't know how much. He has not represented that it would save any specific percent, he merely said that there would be a considerable savings. The rate in one city is different than the rate in another city, depending upon the local situation.

With respect to the group life insurance, he has said that in his opinion that is lower cost group insurance than any other group insurance that he knows of. The insurance he has been talking about prior to this last answer referred to fire and extended coverage insurance, and business interruption insurance. The witness says what he does about life insurance because he did know what the rate was there, but he didn't know what the rate was on the fire and extended coverage type at the local level. He did not know what the percentage savings is on the group over any other group on anything he would be able to get. It was merely his opinion.

[fol. 139] The witness has no knowledge of any type of contract between Brown and the insurance companies concerning this program. Capen and Company in St. Louis is the local agent, and a Mr. Oden Prowell is the gentleman that handles the coverage that the dealer requests, whether it be only fire and extended coverage or in addition to that, public liability or business interruption insurance. It depends on the coverage that the dealer requests. As to who sells it to the man on the spot, it's all done by correspondence.

When a dealer decides to operate his business on the franchise program, prior to the store opening the field representative lets the dealer know that this insurance is available through Capen and Company in St. Louis. Then either the field representative or the dealer will write Capen and Company, and they will write the dealer and explain. They will determine the local rate. And then the actual cost of insurance—the premium that is—is based on the man's average monthly inventory and the valuation of



his leasehold improvements and fixtures. That's why on the monthly report you see a space that is provided for insurance purposes. Then at the end of the first year's operations the average of his 12 months inventory is taken, and then the premium is established based on his average inventory. Brown supplies that average inventory to the insurance company. There is some compensation to Brown for its services. It covers clerical expense—to what extent dollar wise—he doesn't recall. He has seen the figures.

As to how the dealer is told how that rate compares with the rate he would get from a local insurance man, the witness stated that the agent or the field representative, and himself when the occasion arises, tell the dealer that there will be considerable savings. To arrive at the exact saving that is involved, you have to wait until the end of the first year to determine what his average inventory was. He would know what it was per thousand before the end of the year. That could be determined at the time he takes out his insurance. As the witness recalls the rate that is quoted to that man is exactly the same as the rate a local agent would [fol. 140] quote him. But then the savings depends upon the valuation of his fixtures and leasehold and how much his inventory fluctuates. That determines what the savings would be because of him working on a program where there is a group of dealers, and he wouldn't enjoy the same saving locally because the agent is only working with one account locally. The rate is exactly the same as he would be quoted locally.

The insurance premium for a year's period is remitted in advance. He is given a rebate at the end of the year. It is adjusted to an estimated premium for the following year, and the estimated premium for the next year would be based on what his actual inventory was this year. The second year on the plan he would remit in full again at the local rates and then be rebated at the end of that year. It works very much like a mutual type insurance company to the witness' knowledge. The fire and extended coverage insurance policies are renewable every 3 years. It's a three year policy.

If a dealer leaves a franchise program he is advised in writing at least 30 days prior to any cancelling of his insurance so that he can make provisions locally to cover him-



self. If for some reason there is a slip up locally with the dealer and he forgets to do it during that period he will not be just arbitrarily cancelled out. He is given every opportunity to renew that insurance. And at the end of 30 days it is not cut off. It is a 3 year contract, but in the event he leaves the contract is cancellable. And if he does leave the program for any reason at all it has been the practice for his insurance to be cancelled upon 30 days notice, and that same applies to the group life insurance. Now they can of course convert that insurance that they are carrying with Capen and Company with an agent at the local level. So it's not a matter of leaving the store without any insurance coverage.

Item 3 on the franchise agreement, Commission's Exhibit 25-C, requires the store to carry full insurance on the stock and fixtures. The purpose of that requirement is: No. 1, it's good business for any retailer to carry insurance on his stock and fixtures; and, No. 2, the witness is sure that their [fol. 141] credit department prefers to do business with people who carry insurance on their stock, so that if anything happens that causes the business to be consumed by fire or other disasters, Brown has a reasonably good chance of collecting the money that that dealer might owe them. He is sure that other manufacturers would like to have any money that is owing them. That is the reason they request that the dealer carry full insurance on stock and fixtures: No. 1, it is for his own protection, and No. 2 for the people that he is doing business with. As to why it is preferred that the insurance be carried through Brown, the witness really can't give any good reason why the word "preferably" is there. It says if insurance is purchased locally that Brown will be notified. This is so that they will know that the man does have insurance coverage for the reasons mentioned just a few moments ago, for his own protection and for the protection of his suppliers who are furnishing him with merchandise.

Brown's credit terms are 5 percent, 30 days on women's and children's shoes, and 2 percent, 30 days on men's shoes. That discount is the same to a franchise dealer as any other dealer, large or small, that Brown does business with. There are no long term credit terms to his knowledge. That would be in the form of a loan that they might make to

some dealer. But as far as credit terms, they are the same to anyone, to his knowledge. Five percent discount on women's and children's shoes is customary in the trade, by the greatest percentage of women's and children's shoe manufacturers. There are some who do not have those terms. The same is true with regard to the 2 percent discount on men's shoes.

With respect to the purchase of rubber footwear an 8 percent discount on seasonal (dating) orders of 480 pairs or more is customary throughout the trade. That goes to every dealer, franchise dealer or non-franchise dealer.

. . . . .

Brown's arrangements with United States Rubber Company for the purchase of rubber footwear by Brown franchise dealers are outlined in documents like Commission's Exhibit 120 A-C for identification, entitled "Waterproof [fol. 142] Footwear 1958 Season." Another document entitled "U. S. Keds 1958-59 Season" was marked Commission's Exhibit 122 A-C for identification. Commission's Exhibits 120 A-C and 122 A-C were received in evidence without objection.

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March 17, 1960

The following documents on the letterhead of United States Rubber Company were received in evidence without objection.

Commission's Exhibit 123 A-B, entitled "Waterproof Footwear 1955 Season."

Commission's Exhibit 124 E-B, entitled "Waterproof Footwear 1956 Season."

Commission's Exhibit 125 A-C, entitled "Waterproof Footwear 1957 Season."

Commission's Exhibit 126 E-C, entitled "Waterproof Footwear 1958 Season."

Commission's Exhibit 127 T-C, entitled "Waterproof Footwear 1958 Season."

Commission's Exhibit 128 T-B, entitled "U. S. Keds 1955-56 Season."

Commission's Exhibit 129 T-C, entitled "U. S. Keds 1957-58 Season."

United States Rubber Company letters for U. S. Keds 1959-60 Season and Waterproof Footwear 1960 Season are already in evidence as Commission's Exhibits 121, Appendix C and Appendix H respectively.

J. R. Johnston resumed the stand for the Commission.

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With respect to waterproof footwear, the witness does not know what the minimum purchase requirement of United States Rubber Company was for Brown's dealers who were not franchise holders. He did represent, at least up until 1958 or 1959, that a Brown franchisee would receive something additional. He was acting on U. S. Rubber Company's assurances to him. He personally does not know [fol. 143] what U. S. Rubber Company was charging its other customers.

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Briefly restating the situation for waterproof footwear, at least for the past 3 years, up until 1959 the Brown franchisee received 8 percent on a dating order for 144 pairs or over, rather than 480 pairs. That was discontinued effective with the 1959 season. As to fill-in orders, he received an 8 percent discount on fill-in orders if his original order qualified him for the factory 8 percent make-up discount. He receives that at this time. It appears that provision for fill-in orders was in effect back in 1955 and has been continued up until the present time. During the years prior to 1959, the Brown franchisee would receive an 8 percent discount on his dating order for buying 144 pairs rather than 480. He, therefore, qualified by buying 144 pairs. That would have constituted qualification to receive the 8 percent on fill-in orders. That is the way the witness interprets it.

With respect to the U. S. Keds line, Commission's Exhibit 27-C, which was the Brown Company's answer to the Justice Department's interrogatories, states that on fill-in orders, if bought in 12-pair run, and if the merchant ordered at least 480 pairs on advance orders, he would re-

ceive a discount of 8 percent. That program has not been changed since 1955. The witness thinks on Keds that is still in effect. According to the answer to the interrogatory, U. S. Rubber Company (Tr. 235) represented to Brown, and Brown represented to its Brown franchisees, that this was an "additional discount." Again the witness' answer would be, with respect to other customers of U. S. Rubber Company, that he doesn't know, in truth, what the prices paid by their other customers are. He knows just what they represent to him. And whether U. S. Rubber Company offered that to other dealers for competitive reasons or for any reason, he does not know. The Keds discount is still in force today, the 8 percent on fill-in orders if the original order qualified, as far as the witness knows.

So far as Brown Shoe Company is concerned, the witness thinks this U. S. Rubber Company program is confined to Brown franchise stores. If they have this arrangement with [fol. 144] any other group of retailers he is not aware of it. As to any of the Wohl plan stores, the witness doesn't think Brown receives a commission on their purchases. He thinks it was discussed, but does not think Wohl Shoe Company got any discount other than the usual discount to any average dealer. To verify that, it would be best to check with the Wohl Shoe Company. He doesn't know.

. . . . .

At this time Commission's Exhibits 28-A through M and 29-A through L were offered and received in evidence without objection.

The witness' attention was called to Commission's Exhibit 25, specifically 25-C, paragraph 1, the words "lines conflicting with Brown division brands of the Brown Shoe Company." In practice, he interprets this phrase as meaning general lines that have the breadth and depth and selection of pattern and type and heel height and comparable price. That's a broad explanation of it. In other words it would be a shoe that would be similar to a Brown shoe in quality, construction and appearance. And the length and depth of the line would be various types of shoes with classifications like casuals and flats and walking shoes and dress shoes. That's a broad conflicting line. Now there are other lines that don't have the broadness and representation that

some other lines do. A "line" is a group of shoes that a salesman carries under one brand name. That would be confined in gender to one sex—women's shoes, men's shoes and children's shoes.

Fiancess is a conflicting line. So is Town and Country. Fiancess is considered a high-fashion line of women's low, medium and high-heeled shoes. Town and Country is just a little broader line than Fiancess. Town and Country includes high-heeled women's fashion shoes, medium-heeled women's fashion shoes. What is known in the trade as flats and casuals. American Girl would be a conflicting line. That is pretty much the same as a Town and Country type of shoes. The high-heeled dress shoes, the medium-heel dress shoes and the casuals and flats. He thinks American Girl is [fol. 145] the firm name of the company located in New England that manufactures those shoes, but he is not sure.

At this time Commission's Exhibits 83-A and B and 84-A through -I were offered and received in evidence without objection.

Heydays would be considered a conflicting line pricewise, but not from a construction point of view. As the term is used under paragraph 1 of the franchise, the witness considers them a conflicting line. They are women's shoes. It is a very short line. As he remembers the line, it is confined to low-heel types. He thinks Show Offs are conflicting by type, but he is not positive of the price range that they fall into, so he doesn't recall whether they would consider them conflicting from a price standpoint or not. There are men's Shelby shoes and ladies' Shelby shoes. They do not consider either the Shelby Arch Preserver, which is the ladies' shoe, nor the men's the Arch Preserver shoe made by E. T. Wright, conflicting because they are higher priced lines.

The witness does not recall the manufacturer of Citations brand of shoes. They would be considered a conflicting line of shoes. They are pretty much a women's heeled fashion line of shoes. He is familiar with the Grinnell line. They would be a conflicting line in their types of shoes. To the witness' last recollection, not having seen the line, they are women's and girl's sport shoe line. The witness agrees they are casuals, dress flats and sports and things like that. He remembers them basically as a sport shoe line. He is slightly familiar with Golo brand. They consider Golos con-

flicting in their sports shoes. That is a women's shoe again. Velvet Step would be a conflicting line. They are made by International Shoe Company. It's a woman's shoe, basically considered a fashion and conservative, both fashion and conservative types of women's shoes.

Heydeys would conflict with either the Air Step or Naturalizer line price-wise. Citations would conflict with Life Stride or Risque lines. Grinnell would conflict with Glamour Deb line and certain categories of the Risque and Life Stride lines. Golo would do the same as the Grinnell [fol. 146] line. Velvet Step would conflict with Life Stride and Risque and some of their shoes would also conflict with the Smartaire line. The Williams line is not a conflicting line. To the witness' knowledge they make only low priced women's casuals and flats, plus a small collection of women's heeled shoes as they are interpreted in the trade. They are priced below any of the Brown brands.

Lazy Bones would be considered a conflicting line. That is a children's brand name and the line is a service type of children's shoes. He doesn't think they manufacture dressy, patent leather, dainty types of shoes. It is what is considered in the trade as "compo" construction. They are pretty much shoes for school and shoes of the more rugged type. The witness is familiar with the term Lazy Bones Seniors and Juniors. Lazy Bones Seniors, as he recalls their size, run above misses' size 3, and those shoes would be worn by girls and boys that wear above a size 3. They are a conflicting line in their entirety.

Q. With respect to paragraph 1 of Exhibit 25-C and its interpretation, do you make any distinction between the Brown franchisees who have signed one of these contracts and those who have not signed the contract?

A. No, sir.

Q. Would that be true of the provisions of the Brown franchise program as a whole? In other words, the services that a man can get and the requirements and obligations that he is supposed to live up to.

A. Yes, that is correct. There would be no variation of service or items whether he signed the agreement or not.

Mr. Rogal: Your Honor, at this time I should like to offer as a group Commission's Exhibits 30-A through 51. These exhibits are of two types. They are either reports by



the Brown franchise fieldmen or they are letters or memorandums exchanged between personnel of the Brown franchise division in some cases with Brown franchisees or stores but generally among the fieldmen and officers of the franchise division. Commission's Exhibits 30-A and -B, 31-A and -B, 32, 33, 34-A and -B, 35-A and -B, 36, 37-A and [fol. 147] -B, 38-A and -B, 39-A and -B, 40, 41-A and -B, 42, 43-A and -B, 44-A and -B, 45, 46, 47, 48-A and -B, 49, 50-A and -B, and 51, were received in evidence without objection.

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The witness was handed Commission's Exhibit 119 for identification and also Commission's Exhibit 121, Appendix I. These documents together list the commissions paid Brown by U. S. Rubber on rubber footwear. The witness doesn't know for what period of time the commission arrangements in Exhibit 119 were in effect. However, he does recall that the commissions indicated on Exhibit 121 became effective as stipulated. They supplant the commission percentages on Exhibit 119. In other words they were changed from Commission's Exhibit 119 to the Commission's Exhibit 121. He does not know how long the commissions on Exhibit 119 were in effect, prior to their being changed in 1959. He would have to say several years. He [fol. 148] wouldn't know just what period of time was involved. Commission's Exhibit 119 was received in evidence without objection.

By agreement of counsel for both parties, cross-examination of Mr. Johnston was reserved until the first day of the next hearing.

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W. L. H. GRIFFIN, called as a witness for the Commission, testified as follows:

Direct examination.

He is Secretary of Brown Shoe Company and Secretary of several of the subsidiaries, including Regal Shoe Company, Wohl Shoe Company, and of some of the separately incorporated Wohl Shoe Companies, such as Wohl Shoe Company of Miami, or of another town, which are adminis-

tered by Wohl. They are all considered as Wohl although they are separate corporations. He is Secretary of Weath-erby-Keyser. It is a West Coast operation of Wohl. It is really Wohl's retail operation in California. They are leased departments and stores. It's just separately incorporated.

The witness attends the Board meetings of Wohl Shoe Company. Milton Frank normally presides at those meetings. On occasion the Chairman of the Board presides, but it's primarily Mr. Frank. The Board of Directors of Wohl is responsible to the stockholders. Wohl has no stockholders independent of Brown. Brown Shoe Company is its stockholder. The management of Brown appoints the directors of Wohl Shoe Company with the advice of Mr. Frank who is President of Wohl. The witness is a member of the Board of Directors of Wohl.

The witness does not recall a stipulation in *United States v. Brown Shoe Company* that there were consultations between the officers of Wohl and the officers of Brown on policy matters. There is consultation between officers of Wohl and officers of Brown. There are some common directors and common officers of the two companies. This is covered in a stipulation in the present case. (Commission's Ex-[fol. 149] hibit 121) It covers the officers. He doesn't know whether it covers the directors. There are some common directors. The witness is not a director of Brown but he is of Wohl. Mr. Serth is a director of Wohl and not of Brown. The other three directors are common.

The witness was shown a document that counsel for the Commission had referred to as a stipulation. It is not a stipulation. It contains "Certain facts admitted by defendant in response to plaintiff's request under the federal rules of civil procedure." His attention was directed to No. 15. The witness stated that he remembered that. The witness read the following statement:

"Milton Frank, President of Wohl, is also a Vice President of Brown and meets with said officers and directors of Brown from time to time to discuss policies."

He was asked at what level of policy would be discussed, and when do you get to a high enough plane so that Mr. Frank discusses the policy of Wohl with the officers of

Brown. The witness said Mr. Frank, as President of Wohl, is charged with the efficient and profitable operation of Wohl and its associated corporation. He will discuss major policy matters with Brown management and report on progress. But as to the day to day operation, or what shoes will be bought and sold or lease negotiated for, that would not be discussed. It would be reported usually after the fact. It wouldn't be the day to day operation, but it would be matters of major policy.

The witness was asked what a Wohl plan account is.

Mr. Burke: Mr. Examiner, I object to the relevancy of this line of questioning. It doesn't seem to have any materiality or relevancy to the issues in this proceeding as directed to Wohl. I recognize that that's the same type of objection I made before in regard to information as to Wohl.

Hearing Examiner Creel: Yes.

Mr. Burke: But I still feel that way.

Hearing Examiner Creel: The objection will be overruled. You may answer.

[fol. 150] Mr. Burke: May I have a continuing objection to this line of questioning, sir?

Hearing Examiner Creel: Yes, sir.

The witness would like to qualify this to say that he is not connected with Wohl's day to day operation. He is Secretary of the corporation. He handles the minutes and attests to what goes on. He is not familiar with the day to day operation. He is generally familiar with what a Wohl plan account is or was at one time, but he just is not connected with Wohl's wholesale operation today, except he knows the people who operate it and he is generally familiar.

A Wohl plan account is a wholesale account of Wohl, a retailer, who buys women's shoes, which are all Wohl sells at wholesale, from Wohl, and generally Wohl planners will buy most of their women's shoes from Wohl. A Wohl plan account has no relation to leased department. A Wohl leased department is owned by Wohl; that is, its own employees in a leased department. Not all of Wohl's retail customers are Wohl plan accounts.

As to what distinguishes a Wohl plan account from the other retail customers of Wohl, one would probably be the number of Wohl shoes that they would purchase. The fact that they are mostly small leased departments owned and run by an independent retailer, who makes form reports to Wohl and Wohl advises him on his merchandising. He doesn't know, of his own knowledge, whether a Wohl planner can carry conflicting lines and remain a Wohl planner. They are generally small departments, leased retail departments, as opposed to being shoe stores, and normally new in business.

Wohl's leased outlets are its primary retail operation. They will have a manager, and he will have salesmen, and they will take a lease to sell shoes in somebody else's store, in a department store. They are sold in the name of the store, under the sales slips of the store, advertising in the store's big ad, which may include dresses or something else. And their operation, like many other leased departments of stores, is an integral part of a department store, the policy.

[fol. 151] Wohl leases some stores. It will have a real estate lease as opposed to a lease arrangement with a department store. They lease a store building or a portion of a store building in which to operate what they refer to as an individual shoe store. Wohl owns no real estate of that kind. It is all leased. The total of 457 leased departments in 243 stores would include all of Wohl's controlled outlets, operated by their own employees. It was pointed out in the stipulation that that figure includes both leased departments and individual shoe stores. Wohl also sells shoes to other independent retailers. That program is no different from just a simple customer-seller relationship.

. . . . .

In Wohl's leased departments they may sell some Brown brands. Wohl has its own brand names, its own registered trademark, registered in the name of Wohl Shoe Company, and those are also sold in their retail departments. In their wholesale division, where they have salesmen calling on the trade, they sell only Wohl brands.

The witness doesn't know whether a Wohl planner would stock any of the Brown brands. He is familiar only in a very general way with Brown's agreement with the insur-

ance companies which underwrite the insurance for the Brown franchise dealers.

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[fol. 152] Cross-examination.

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Mr. Burke: I have no further questions.

I would like to move at this time that all testimony of Mr. Griffin with respect to Wohl be stricken from the record for the same reasons I objected to the original testimony.

Hearing Examiner Creel: The motion is denied.

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CHARLES N. AREND, called as a witness for the Commission, testified as follows:

Direct examination.

Mr. Arend is Vice President in charge of sales for the Juvenile Shoe Corporation of America. He has been subpoenaed to appear here. His duties are to direct the sales of their company and also look after their advertising. The main office is Aurora, Missouri. They maintain a sales office in St. Louis.

[fol. 153] The witness started with Juvenile in the Aurora office in 1933, some 27 years ago. He was there for approximately 4 years, doing general office duties, and the last position he held there was specification and construction details. He was then transferred to the St. Louis office to go into the sales department. He spent about one year in their sales office, sales training program, and then went out into a territory consisting of Missouri, Arkansas and Kansas, at which time he traveled until he was drafted into the Army in World War II in 1942. After his discharge from the Army in 1945 he was given a territory consisting of Indiana, Ohio and Michigan, which he covered until early 1947, at which time he came into the present job, which he now has. He has been the Sales Manager since 1947.

His company is a member of the National Shoe Manufacturers Association. The President of his company, Mr. Pate, represents the company in that organization. He has on occasion attended their clinics and workshops and that part of the meeting. In his job as sales manager, the witness makes trips throughout the country, contacting the salesmen and their customers and discusses industry conditions with them.

He attempts to spend as much time as possible each season in the territory with the men, especially some territories more than others, but as time permits. How often he makes these trips is a hard question to give any definite answer on. Some seasons he is able to spend a good deal more time than others. Unfortunately, this past season, he hasn't spent as much time as he would like. But his job does call for extensive traveling throughout the country.

The witness attends shoe shows. He will usually attend probably 4 to 6 each year in various sections of the country. He has been appointed General Chairman of the 1960 St. Louis Shoe Show, which has been designated the Shoe Market of America this year. At that show will be a broad representation of all types of shoe manufactured. There will not be the majority of manufacturers, because the physical set-up would not permit that many to be in attendance, however, all phases of the industry will be represented. The witness keeps informed on industry conditions [fol. 154] by reading various papers and publications. He reads the Footwear News, Boot and Shoe Recorder, The Coast Shoe Reporter and The American Shoe Making. It is necessary in the performance of his duties to keep informed on industry conditions.

His company is a corporation. The principal officers of the company are C. F. Reith, Chairman of the Board; Mr. Gale Pate, Sr., President; Mr. Don Heiston, Vice President in Charge of Production, and the witness is Vice President of Sales. His company is in the top 70 in the industry, based on sales volume. They have 3 manufacturing plants: Two are in Aurora, Missouri, and one is in Sarcoxie. They have approximately 600 employees.

The company has two nationally advertised brands on which they have national distribution. One line is the Lazy Bones line and the other is Clinic. Lazy Bones is their line



of children's shoes, infants, children's and misses'. They also go up into growing girls' and what are known as women's shoes and youth sizes. Clinic shoes are professional shoes for nurses, technicians, waitresses, beauticians, etc. On both lines they have national distribution in all the 50 states, as well as some foreign countries. Generally speaking, the retail prices on Lazy Bones shoes are from \$5.95 or thereabouts in the infant size range up to \$9.95 in their growing girls' sizes. The retail price range for Clinic shoes is \$8.95 to \$12.95 or thereabouts. For their own personal records within the company they refer to the Lazy Bones shoes for infants, children's and misses as Lazy Bones Jrs., and the growing girls and youth sizes as Seniors. But there is no designation as such in their advertising.

Their shoes are distributed through retail shoe stores and department stores. They do not sell them to a wholesaler, they sell directly to the retail shoe store and the department store. They use 13 salesman, who cover the entire United States, including Alaska and Hawaii. All salesmen carry the entire line and travel exclusively for the Juvenile Shoe Corporation. The company gives cash discounts. Their terms are 5 percent 15 days, 2 percent 30 [fol. 155] days, net 31 days. They have a nationwide distribution. The greatest number of accounts they sell are in the small towns of 5,000 to 30,000 population.

Q. Generally speaking, in these small towns as I have defined them how many suitable shoe outlets are available to you?

Mr. Burke. I object to the form of the question. It is vague, ambiguous, and calls for a conclusion on the part of the witness.

Hearing Examiner Creel: Well, of course, the number is bound to vary in different towns, but I will overrule the objection and let him answer it.

A. That is a question that you couldn't make a definite statement on. It certainly does vary. I would say in towns of—you said 5,000 to 30,000?

By Mr. Timony:

Q. Yes.

A. I would say possibly from one to four that we would

regard as desirable, potential customers, taking into consideration credit rating, etc.

Q. Do you know what the Brown Franchise Plan is?

A. I have never seen a Brown Franchise Plan agreement. It has been reported to me——

Mr. Burke: I object to this testimony. It is obviously based on hearsay from the witness's own statement.

Hearing Examiner Creel: Yes, it is hearsay. But counsel has gone to a lot of trouble to establish this gentleman as a shoe expert. I would like to hear from him.

Mr. Burke: I beg to differ. He doesn't qualify as a shoe expert any more than he has just described what seems to be the normal duties of a vice president of corporation who looks after their own particular self-interests and happens to be in the shoe business. He is hardly a shoe expert.

Hearing Examiner Creel: Well, we needn't argue about it. What I mean by a shoe expert is from the marketing end. [fol. 156] But I would like to hear from you Mr. Timony.

Mr. Timony: Mr. Arend has testified that he is in a position in his company where he would receive reports from salesmen as to the competition that they are running into. I think that in their reports they would have to define what their competition is and how it is defeating the sales of Juvenile.

Hearing Examiner Creel: I think this: I think he can testify as to what his salesmen have reported to him, yes. If he were just repeating something that he had heard by chance, of course, that's a different thing. But if you confine your answer, Mr. Arend, to the information you have received as a part of the regular reports that your salesmen send to you, then you may answer. And I will overrule the objection.

Mr. Burke: May I have a continuing objection to this line of interrogation?

Hearing Examiner Creel: Yes, sir, you may.

A. We require each of our salesmen to submit a daily return report, listing the accounts that they call on. And from these reports and from semi-annual discussions during our sales meetings with our salesmen they have pointed out to me incidents where volume has declined with certain accounts; that this has been brought about by the

fact that certain accounts have gone on the Brown Franchise Plan.

Mr. Burke: Mr. Examiner, I object to the testimony and move that it be stricken. The reports are the best evidence. Apparently there are written reports.

Hearing Examiner Creel: Some of them are written and some of them are not. Motion is denied.

By Mr. Timony:

Q. Are these reports written?

A. Yes. We keep those reports for about a year or a year and a half and then they are discarded.

Mr. Burke: I suggest all testimony of this witness be limited as to identifying the reports and then submit the re-[fol. 157] ports so that we may have the privilege of examining them.

Mr. Timony: I think the question that I asked that we are now talking about is just what he knows to have been the franchise plan. He would have accumulated this knowledge over the last 12 or 13 years certainly from these reports of salesmen; from the general knowledge that he gains by his position where he has to—

Hearing Examiner Creel: I think so. I don't think it is incumbent upon him to furnish these reports because, as he has said, a great many of them have been destroyed. But I will bear it in mind and see where we get with this testimony. Thus far we haven't gotten anywhere yet. Go ahead with your examination.

By Mr. Timony:

Q. Would you please describe what you think the Brown franchise plan is?

Mr. Burke: Well, I object to the form of the question. The question calls for a conclusion of some kind and obviously based on hearsay because he doesn't know—

Hearing Examiner Creel: I think so. Objection sustained.

By Mr. Timony:

Q. Have you ever talked to Brown franchise dealers?

A. Yes, I have.

Q. What about?

A. In most instances about——

Mr. Burke: Can you fix a time?

A. ——about our line in regard to Brown lines that have replaced some of the lines they formerly bought from us.

Q. And in these discussions you have talked about the merchandising methods of the Brown franchise plan?

Mr. Burke: Mr. Examiner, so that we may have a record here, and also so that we may have some way of determining whether these questions and answers are pertinent to [fol. 158] the issue at hand, I think it would be helpful to have the time and place and with whom.

Hearing Examiner Creel: Yes, I think so. I think the first thing that you should estimate for us, if you can, is the number of such accounts that you have talked to. Can you give us a rough estimate as to how many?

The Witness: That's pretty hard.

Hearing Examiner Creel: As many as 50?

The Witness: I wouldn't say so.

Hearing Examiner Creel: Half that many?

The Witness: Oh, I would say—to make it safe, I would say 10.

Hearing Examiner Creel: And over what period of time?

The Witness: Over a period of 5 years.

Hearing Examiner Creel: Can you give us the names and locations of some of these people?

The Witness: Well, one is Jim Houck, of the Fisher Shoe Store, at Plymouth, Mich. I have talked to Morris Kay of the U. S. Stores in Fort Wayne, Ind. I have talked to Dick White of Floyd & White's Shoe Store at Blytheville, Ark.

Hearing Examiner Creel: Well, maybe that's enough for this purpose at this time. Go ahead, Mr. Timony.

His salesmen have also made reports to him concerning this Brown franchise plan in the matter of explaining, as an example, why they had not sold an account when they called on him, or explaining why the volume of that account had been declining. They now sell to Brown franchise dealers. They sell very few of their Lazy Bones Shoes. They sell primarily their Clinic shoes. The general trend in any

case where a dealer goes on to the Brown franchise operation is that there is a very definite and sudden drop in their Lazy Bones volume. For some reason unbeknownst to him the Clinic volume seems to go on usually about the same.

[fol. 159] They have sold retailers who were formerly independent who are now on the Brown franchise plan. As to how he knows they are now on the franchise plan, some of these incidents are reported on the daily return reports he receives from his salesmen. He knows of some personally. At their semi-annual sales meeting there is time set aside for individual conferences with their salesmen in order to go over their accounts. At this time they go over carefully with them their accounts and discuss the progress or decline of various accounts and what might be responsible for these accounts that are declining in volume and what corrective measures they may take. At these discussions he is told by the salesmen of any accounts who have gone on the plan which they feel has caused a decline in their volume.

Mr. Burke: Mr. Examiner, I move that the testimony in response to that question be stricken. It is based on hearsay, discussions. It obviously is vague and indefinite as to times and places; people generally discussing with Mr. Arend matters that they thought were their opinions, opinions of other people. And it's now become Mr. Arend's report on such hearsay testimony. I believe it's objectionable.

Hearing Examiner Creel: Motion denied.

The witness has to a certain extent, conducted an investigation of their files concerning sales to customers who are now on the Brown franchise plan. He has here a few of their accounts which he is certain are Brown franchise accounts. Listing first, the firm name and address, and the next column is the year and the number of pairs that they purchased in those various years in the various categories such as Lazy Bones Juniors, Lazy Bones Seniors, Clinic, and then the total. He has 12 shoe stores listed there. These are not all of the Brown franchisees to whom they now sell. These are the ones that he is sure in his own mind, either that he knows about personally through discussions with their salesmen that have gone on the plan, or incidents where at some time or another the salesmen have reported

to him on their reports that the account has gone on the plan.

[fol. 160] The witness was requested to pick 10 or 12 examples, and that's what he has done. He picked the ones that he was confident were on the store plan. It took him probably a day and a half to conduct that investigation. After they picked these out he wanted to check to verify the records with the general office to be sure that it agreed with their sales figures from their permanent records. It took probably a half hour or so to pick out the 12 stores. The foregoing list was offered in evidence as Commission's Exhibit 138-A and 138-B. The exhibit was prepared from the books and records of Juvenile. The witness personally made the exhibit, Commission's Exhibit 138-A and 138-B was received in evidence without objection.

Juvenile has sold shoes to the Fisher Shoe Store at Plymouth, Michigan, and sells shoes to them now. Juvenile sold Lazy Bones Juniors to Fisher Shoe Store in 1952, but have not sold any Lazy Bones Juniors to Fisher since 1952. As to the reason for that, the witness said, Jim Houck, the owner or part owner of the Fisher Shoe Store, is a personal friend of mine, whom I have known for a number of years. And it was at a shoe show in 1953—I believe right here in St. Louis—that Jim Houck came into our sample room and pointed out to me that he would no longer be able to use our Lazy Bones shoes. When I asked Jim why, he told me that he had gone on the Brown franchise plan, and, with the help of the Brown Shoe Company, or words to that effect, he was opening a second store. And on this basis he would be no longer able to use our Lazy Bones Juniors shoes. After 1952 Mr. Houck had two stores, both of which were Brown franchise stores.

The witness was asked whether he checked with his company to see if there was any recorded reason why the other 11 stores on Commission's Exhibit No. 138 dropped or decreased their purchases of the Juvenile line. He said, those customers on this list were submitted to our general office, and that at my request they checked to see if there were any problems credit-wise or from the standpoint of excessive return goods, which would indicate a complaint on our shoes or for any reason from neglect in any way on our part



[fol. 161] which would cause the volume of any of these accounts to decline. And I was informed that no such cases existed on the accounts on this list. As to whether, in cities involving these accounts where volume has declined, Juvenile has found additional accounts to replace the volume lost, the witness said, in two towns on that list we have sold additional accounts, but today's combined total of both accounts, in both instances, does not equal the total or the volume of those two accounts originally before they went on the Brown store plan.

He feels reasonably sure there are other stores they sell to today, that are Brown franchisees which have either stopped buying or significantly curtailed purchases from them, besides those set out in Commission's Exhibit No. 138. These are accounts that he felt confident in his own mind, after a discussion with his salesmen from their reports, were on the Brown plan, and he held the list to this number since he was only asked for 10 or 12, and he wanted to make certain that he had those that were really Brown franchise stores.

His company is having difficulty in finding outlets in small towns from 5,000 to 30,000 population today. It's becoming increasingly more difficult in smaller communities to find desirable outlets, taking into consideration the types of stores, credit rating, and many other points that have to be considered in selling an account. Quite a vast difference now than back in the late 30's when he was on the road traveling. He has been in several towns where maybe he hasn't visited for 5 years or so, and has seen quite a decline in the number of firms that could be considered potential customers. There are a number of retailers today, who at one time were independent, who are on franchise or possibly have leased or sold their business to shoe manufacturers. In some instances there has been a decrease in the number of shoe selling stores in these small towns. As our highways and automobiles become better, some of your smaller towns naturally are not as good as they were possibly 10 or 15 years ago. But there are still a great number of people in those communities that still shop in their home town.

[fol. 162] The witness was asked from his experience in the industry and from the reports of his salesmen, from the knowledge gained in this way, whether he has difficulty in selling to stores who are on the Brown franchise plan.

Mr. Burke: I object to the form of the question. It calls for speculation and I presume a good deal of hearsay and this witness's own personal opinion, based on what might obviously be coming from the lips of a competitor who has certain preconceived notions on this.

Hearing Examiner Creel: Well, I will sustain the objection. But I do believe that he has already testified and specifically to that effect. And this exhibit presumably—I haven't seen it, but I presume, from what he said about it, that it shows a falling off in volume to these 12 accounts that he has named.

Mr. Timony: There are customers he had formerly who might, or might not, have been on the franchise plan but who are now on the franchise plan. And I was trying to elicit by this question that he had difficulty getting into a store which is on the franchise plan.

I think Commission's Exhibit 138 shows that once he has a customer who switches to the franchise plan that then this customer will stock or significantly reduce his purchase from Juvenile. This question was intended to show that he also had difficulty in obtaining an outlet which is on the Brown franchise plan.

Hearing Examiner Creel: Have you had any difficulty in getting into any particular Brown franchise account?

The Witness: We don't make a general practice to attempt to sell Brown franchise stores. Our experience with those accounts who were formerly strong accounts for us, whose volume dropped off sharply after going on the plan, there is an indication that they were not desirable outlets as far as volume is concerned. We don't, as a general practice, solicit those stores as accounts.

[fol. 163] Hearing Examiner Creel: But have you in any particular instance solicited business from one of those Brown accounts?

The Witness: I am satisfied that some of our salesmen have. I couldn't state a specific instance, to be honest with you.

### Cross-examination.

The witness very definitely agrees that the shoe business is quite a competitive one. Juvenile currently has approximately 2500 or 2600 retail outlets as customers. They sell department stores and shoe stores, and both are included in this group of 2500 to 2600. The company has a national advertising program. They advertise their Lazy Bones in Parents Magazine and Modern Romances. Their Clinic shoes are advertised in the American Journal of Nursing, in Registered Nurse, and in Glamour Magazine. Then they advertise in the Boot & Shoe Recorder and the Coast Shoe Reporter, which are trade publications.

Generally speaking, Clinic shoes are designed for nurses and beauticians and people that would normally wear white uniforms. However, they do make the same types of shoes in blacks and browns, which they label Clinic Off-Duties, for nuns, visiting nurses and certain women in professions that have to wear shoes other than white shoes. Clinics are not what you would normally call a high fashion or high style shoe. It is a service shoe, a comfort shoe. Their Lazy Bones line is not as extensive as the Brown Shoe Company's lines in that they do not have the number of patterns in each category that Brown has. But they are represented in each of the categories that Brown is. Taking the Buster Brown line as compared to the Lazy Bones line, there is a greater choice to a merchant in various colors or patterns or styles available in the Buster Brown line than there would be in their line.

. . . . .

The Lazy Bones line of shoes has competition from other lines of other manufacturers besides Brown. Jumping-Jacks would be a competing line, and so are Poll Parrott, [fol. 164] Wetherbird, and Red Goose. Also Gerwinettes manufactured by Schawe and Gerwin, and Acrobat, are competitive. The shoe called Dress-Ups is beyond the limit in price, where they would not be considered competitive. Most of their misses' shoes retail somewhere around \$8.95 to \$9.95. The price bracket has a substantial bearing on the competitive nature of the particular brand. There are within some of the lines mentioned above various price ranges.

Poll Parrott, Weatherbird and Red Goose were mentioned. Those particular brands cover a wide range of prices. There are certain types and certain price ranges that would be more competitive than others within those lines. That would be a number of the brands of lines of shoes that would be competitive with Juvenile's. In the children's shoe business any time anyone sells a pair of children's shoes he is a competitor because most families don't buy but one pair of children's shoes at a time, and wait until it is outgrown and outworn before they buy a second. So, as competition, he would also be able to include other brands of children's shoes, maybe in other price brackets, because they are fitting one pair of feet at a time. They realize as they go up the ladder on the price scale that the layer between those customers becomes quite thin. Blue Bonnet would be in the lower range of the price scale. Step Master, as a children's brand of shoes, would also be in that category. Pied Piper would definitely be in the higher priced category, and probably Stride-Rite. There are quite a number of lines of children's shoes competing for the sale of these shoes to youngsters requiring shoes, ranging from the baby or cradle type shoe up to the growing girls' or growing boys' shoes. And it is in that field that the Juvenile Shoe Corporation with its Lazy Bones line is competing with these other manufacturers of these other brands.

Brand name recognition very definitely plays a part in the merchandising of shoes. And the more you spend for advertising the nearer you come to saturating the market with brand name recognition. Brand name recognition certainly helps materially in selling the shoes at the consumer level. And to a certain degree it helps the manufacturer's [fol. 165] sales representatives in selling shoes to the merchants for handling. When a salesman is talking to a merchant his objective is to encourage the shoe retailer to carry his line as opposed to somebody else's line. That is the usual sales technique. That is the nut of competition.

Whether a shoe retailer in a town of 5,000 to 30,000 population is apt to carry more than one full line of shoes in a particular brand name would depend on the town, the economic conditions in that particular trading area. If he could carry an inventory that would have an adequate turnover, meaning that he had sufficient volume, he might conceivably

do that. In other words, a town, say, deep in Mississippi of 15,000 certainly wouldn't be considered as having an equal potential to a good industrial town in Ohio or in Indiana. That would bear on the particular merchant's judgment as to how he should stock his shoes and what the potential market was in that trading area. And that would govern his decision as to the shoes that he would stock.

The witness said to a certain degree there is a turnover in his company's accounts. People will die or go out of business or circumstances change, and you have some customers going off your list and some customers coming on your list. Occasionally it happens that the independent retailer may have decided to stock one of these competitive brands that were mentioned a moment ago.

. . . . .

The witness recalls making a statement that they do not solicit outlets that were not desirable. In using the term "not desirable", generally speaking, he had reference to a man's credit rating. Juvenile's terms are pretty stringent in view of the language of the agreement, and consequently, if a man is not top-notch credit, why unfortunately they don't stay together long. He thinks that reputation is pretty well known in the trade.

In the last recent years the size of his company has been growing so far as shoes produced and shoes sold. In fact, they produced and sold more shoes in 1959 than they did [fol. 166] in the preceding year of 1958. And the general financial condition and net worth of his company is continuing to grow through the years. And that is true as to the current year compared to last year. A great deal of expense and effort, and so forth, has been required to continue the upward trend of their volume. Back in 1947 when he first came onto the job he is on, they were strictly welt shoe manufacturers, and in order for them to maintain their relative position in the industry and to take their share of the volume, it became necessary for them to expand their operation to include other types of shoes.

For an example, in 1950 or 1951, in addition to the welt production, they had to go into little ways. Little ways give you lighter weight type shoes, give you moccasins, loafers

and other types of shoes which could not be made to sell in volume on the welt construction. Then in 1955 and 1956 they had to go into their boys' and youths' shoes, known as Little Gents shoes. And there again through additional efforts and expense of equipment, and so forth, they were able to shove ahead a little more to again retain their relative position in the industry. Just this past year they have completed and gotten into production in their new cement plant at Aurora whereby they make little girls' Dress-Up shoes. So you can see it hasn't been possible to continue to grow making just their types of shoes they were making some 12 or 13 years ago. It has been necessary for them to broaden their scope.

He feels that they have about got to the possible limits of what they, with their experience and background, are going to be able to do in broadening their line. Clinics are not style shoes. They are women's work shoes. So they know nothing of the women's style industry, style shoes. They couldn't get into the style shoe business, they would go broke quick. They have just about got to their limit as far as broadening their scope in order to maintain their relative position in the industry.

The witness was asked if a merchant stocks a complete line of Lazy Bones, which is his line, is that same merchant, if he is a small merchant, apt to stock another complete [fol. 167] line of children's shoes. The witness asked counsel for respondent to define a competing line. How many dollars difference at retail. Taking Weatherbird for an example, one account that they sell that uses some Weatherbird corrective types of shoes. His company doesn't make corrective types of shoes. A corrective type is a special type for a special purpose. Those shoes retail about \$2 above the retail price of Juvenile shoes for corresponding size range. Now, in an instance like that, he would say, "Yes." Of if the retailer covered quite a broad price range whereby he wanted to buy some special low-end merchandise, possibly low-end step-downs for a special promotion, which they don't make, he probably could find it in the Weatherbird line. Generally speaking, it is true that, except for the instance of a corrective type of shoe or a low-end of the price scale, if they stock the Lazy Bones they wouldn't use the exact comparable shoe of another line in



the same price range. And that is the sort of typical merchandising policy of many independent retailers when it comes to a decision of buying shoes for resale to the public.

The witness mentioned White's store at Blytheville, Arkansas. It was reported to the witness as a franchise store. He did not know whether the store had been on the franchise program for 5 years or 7 years. The Juvenile representative wrote him a letter at the time and said that Dick had told the representative that he was going on the franchise plan. That store still stocks Lazy Bones at the present time in a limited way, primarily in their growing girl shoes. Very, very few, if any, of the Lazy Bones Juniors. He does a pretty fair job on their Clinic shoes for a town the size of Blytheville. The witness assumes that he would stock Buster Browns as an alternative to the full line of Lazy Bones shoes if he is on the franchise dealer program.

The witness was asked if that dealer were not on the franchise dealer program but he stocked Buster Browns, would a person in that category be likely to stock Lazy Bones. He said that if he were the retailer and he was not obligated to buy any particular line to the fullest extent, then it would behoove him as a good retailer to pick what [fol. 168] he thought were the best values out of each of several lines. Being in the shoe business he is sure that Brown has certain shoes that are better buys for the consumer dollar-wise than other patterns. That, generally speaking, happens in most industries. A shoe retailer certainly has the ability to pick those styles from any line that would give his consumers the most for their money. If the retailer were not obligated to buy an entire line, there is no reason why he couldn't merchandise within the same price range certain styles from one line, and non-conflicting styles from another line. Then he would have in his inventory a range of various brands. The witness is sure Brown's representatives have been in many independent retailers' operations where they have seen several brands within the same price range, but not necessarily conflicts as to pattern.

Q. Now, I take it what you are saying now is that the idea of a retailer carrying several brands within the same price range is contrary to what you said a short while ago

in answer to another question in regard to conflicting lines. Do you recall stating that retailers frequently choose to carry one line of shoes in preference to duplicating it with another brand?

A. That's right. You will have some instances where retailers will buy one line in one price range. You will have other retailers who will buy from more than one line in the same price range. I don't think you can make a general rule that will cover all retailers. If we could then either all retailers would be exceptionally good creditwise or they would all be very poor creditwise.

The manner of handling the inventory has a bearing on the credit standing of retailers. The inventory they carry and the turn-over figures and how they merchandise their stock. As to whether the witness regards credit as a rather critical factor in his customer relationship, he stated, they haven't as yet been able to find any supplier who will furnish them materials without paying for them, and without getting paid for their shoes they have no way of paying their supplier. So they do business in the same way on the other end.

[fol. 169] Redirect examination.

His company's fiscal year ends October 31. They are not yet through 6 months of the year. Comparing sales from November 1, 1959, to date with the comparable period from November 1 of the last fiscal year, their volume is slightly ahead. Whether it is profitable for a shoe retailer to handle more than one line of shoes depends upon the operation. You will find some retailers who do carry one line within one price range, whereas you will find other retailers who carry more than one line. Generally speaking, it is difficult for all retailers to fully cover all of their needs from one line. Most retailers, at least to a certain degree, find some items from a second or additional line. He is referring to independent retailers now.

The customers his company usually sells to handle several lines of shoes and still stay in business and seem to make a profit. That's the qualification that he made a minute ago when he said most independent retailers will buy more than one line. Certainly some will buy more lines than others. But its pretty hard to get the best in each category from

one line. There are certain categories that certain lines do a little better job in than others. A retail merchant has the opportunity and privilege of selecting what he feels in his own requirement is the best category from any one of several lines within a price range. When he is referring to one line he is referring to one brand name. He thinks the retailer can better manage to give his consumers better values for the money by doing it that way, if he has that choice.

#### Recross-examination.

The witness was voicing that opinion both from the standpoint of his position as sales manager of the Juvenile Shoe Company, and also from his experience in visiting retail stores and talking with retailers that he has known over a number of years. But his capacity as sales manager is how he happens to be talking to them.

. . . . .

[fol. 170] As to whether it is a phase of the retailing business that many of the retail shoe merchants carry Clinic shoes in order to meet the customer preference for that type of shoe, the witness said, yes, we have good distribution on our Clinic shoes. It's entirely possible that that would be the type of shoes that merchants, retail shoe stores, would carry to take care of special customer preference that may not fit in with the other line of shoes that they carry. There are many of the Clinic dealers who have supplemented their white duty shoes by buying shoes from other lines than Clinic, in the same type of purpose shoe. Again it gets down to patterns, styles, preference, local preference. Maybe even in some instances fads, strange as it may seem, in nurses' shoes.

As to whether his salesman is interested in having a shoe store carry a full line of Clinics if at all possible, the witness said, it is our feeling that a retailer carrying our Clinic line of shoes can carry too many styles to profitably do a good job. We like for them to have every category covered to the best of their ability, depending on the inventory that their volume will justify. We certainly do not try to load up any man on Clinic shoes.

It's our policy, we have always told our salesmen, and our salesmen point out to any new accounts that they open, that the initial order on Clinic shoes is unimportant. It doesn't mean anything. And I point that out frequently because occasionally a man will come in to me or into our sales room, and we will want to buy AA's in two or three lines of shoes. And I say, if you are going to do the job right you have only two things to sell in Clinic shoes. You have fit and comfort and expense. And you can't properly fit shoes in two widths. Now, why don't you buy fewer styles and buy widths. The initial order is not important. We are not trying to sell you two extra widths to get 12 more pairs. At the end of the year you will see that the 12 pairs we are trying to get you to buy now is not for the purpose of getting in 12 extra pairs, but it is to help you do a better job to properly fit the girls so that you can, in turn, build your business and at the end of the year realize a greater profit from Clinic shoes. In other words, to carry the heart sizes of the Clinic shoes that would cover the [fol. 171] needs of the different customers with their different size feet coming into the store.

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JACK ALTMAN, called as a witness for the Commission, testified as follows:

Direct examination.

The witness is a shoe manufacturer. He is Executive Vice President and General Manager of Deb Shoe Company, Inc., a Missouri corporation. He was subpoenaed to appear here. Deb Shoe Company makes young women's, high style, fashion shoes. The witness has two office addresses. The principal office of Deb is at Washington, Missouri. He also has an office at 2120 Washington Avenue, St. Louis, Missouri. That is a show room, advertising, sales office. There is more than one factory. They are in Washington, Owensville, St. Clair, and Union, Missouri.

In one factory they make flat heel shoes, little flatty type, and low heel young girls and women's fashion shoes. In another factory they make women's mid-heel fashion shoes. Also they make wedgy type shoes and footed heel type. At

another factory they make strictly women's medium to medium high fashion dress shoes. Their shoes are in the retail price category \$7.95 to \$14.95. In the shoe industry that is in the popular to medium price bracket. A shoe from \$17.95 or \$18 up into \$20 up is a higher bracket. From \$10 to \$14 to \$15 is the medium bracket and from \$8.95 down would be the lower bracket today.

The witness has been with Deb Shoe Company since its inception, 1946. He was the founder of the company. It was started as a corporation, and it is the same corporation today. As to the positions he holds with Deb, other than the one he already testified to, he is a designer, salesman, sales manager, and "everything else except the janitor, practically." He supervises 25 salesmen. They sell their products in the complete United States, Puerto Rico, Hawaii, a few [fol. 172] shoes to Europe, and a few shoes to Japan. Their approximate gross volume last year in sales was around \$9,000,000. That's off about \$400,000 from the previous years. The squeeze is beginning to come. They made approximately 1,600,000 to 1,700,000 pairs of shoes last year.

The witness has been in a shoe store or factory all his life. He grew up as a kid in a shoe store with his father, who was in the retail business for 50 years in the South. That's all the witness has ever done is shoes, all his life. When he returned from military service, he came to St. Louis and started on his own in a small way to make shoes. From that he grew little by little, and then in 1946 he went into business with Mr. Sam Wolff of the Wolff Shoe Company. At that time it was Wolff-Tober. Now it is Wolff. He went to Owensville, Missouri, and stayed there continuously, except on short week-ends. He styled the shoes and helped set up the factory and he made the shoes, and then he went out and sold the shoes. He did practically everything until the production was about 700 or 800 pairs a day, and then he started putting on salesmen and they started expanding a little.

The witness has been all over the country many many times. He makes most all of the sectional shows. He knows a great many of the better shoe people and shoe stores and department stores in the United States. He is pretty well acquainted with most of the buyers and merchandise people

in the United States. As a sales manager he has familiarized himself with the major competition in the shoe industry.

The witness is very familiar with Brown Shoe Company's brands of shoes. All of their women's fashion brands compete with his company's shoes. They are priced at around the same price. They also have many, many of his patterns which he put in one season and they adopted the season of the following year afterwards.

Deb sells to approximately 1600 or 1700 customers. They manufacture shoes to specifications to the better department stores, specialty stores and shoe stores. They sell to retailers.

[fol. 173] Q. Is any sizable portion of your business done in the smaller towns, or is most of it in the big cities, or can you characterize it that way at all?

A. Well, our business in the beginning was greater in the smaller cities than today; but, due to the purchasing or the loaning of money, the franchise, whatever it may be, there is very little place to sell shoes in the smaller cities today.

Mr. Burke: Mr. Examiner, I move that the answer be stricken as not being responsive to the question.

Hearing Examiner Creel: Well, of course, he could turn around and ask him a question to which it would be responsive, and we would be right where we are. Overrule the objection.

As to approximately how many suitable shoe retailers would be found in the average town of from 5,000 to 30,000 population in the United States, the witness said this depends on the type of city it would be. He would say that up to 15,000 you have about 2 or 3, which today the big three controls practically. And there may be one man left there, he doubts it. Then in the towns of 15,000 to 30,000 population there may be 2 left that aren't controlled by the big three or four.

Q. I don't understand. What do you mean, "controlled by the big three or four"?

A. Well, let's face it. When corporations do 250 million dollars they have got to sell shoes. And they have got to sell somebody shoes. Where are they going to sell those



shoes? They are going to sell them in every nook and cranny that they can possibly get. And they sell those shoes, and I don't know how or why because I can't speak for every city. But you can walk into any town, and they have got their setup. And I dare you, in 90 percent of them, to find anybody else's shoes except the shoes of the companies that control those stores in those towns. I will take you into any city you would like to go.

Q. What do you mean by the "big three or four"? That's your term.

A. The big three or four is the Brown Shoe Company, with its subsidiaries—

[fol. 174] Mr. Burke: Just a minute. May I object? I object to what this witness has said in this last statement or speech as not being responsive to any question in the record. No proper foundation has been laid for the voicing of what apparently is this witness's own private opinions about certain things. And it may be what is on his mind; and certainly, if that's the case, it's not pertinent evidence or credible evidence for this proceeding. So I respectfully object to the testimony that's been given and move that it be stricken and that the witness be instructed to continue his answers to the questions that are asked so that the record may be kept in an orderly manner and that, if necessary, an appropriate objection can be made and testimony can be adduced in a proper way.

Hearing Examiner Creel: I am going to deny your motion and let his answer stand. But, Mr. Witness, I do wish you would try to respond directly to the question that is put.

The Witness: Yes, sir.

As to how many shoe outlets there would be on the average in towns under 15,000 population, the witness would say that little department stores, and specialty stores, along with shoe stores, average 5 to 6. That takes in like the J. C. Penney or a little specialty store. That takes in some other types. Maybe a dress shop. And also it would take in an average of 3 shoe stores maybe. But it would make up, he would say, around 5 to 6 stores that could sell shoes, of which he would say 2 were in the lower bracket of the 5 to 6, 2 or 3 in the middle, and maybe one in the better

level. In towns of that type you have only one of the better level stores, sometimes two. But as a pattern it usually works that way. One, maybe 2, of these stores would be considered by his company to be a suitable outlet for their line. It's the best and the second best.

As to the other classification of 15,000 to 30,000 population, he said, there you would have an additional 2 or 3 units that would sell shoes. And in a town of 30,000 you would probably have—a person of my type would probably have a choice of 2 spaces, of which either one or both are taken over by a chain. You know, that has departments [fol. 175] which specialize, as an example—or, if I might say, the Wohl Shoe Company can take over the better department in that town—if you can get it at any price.

Mr. Burke: Mr. Examiner, this witness seems to ramble and seems to persist in trying to throw into the record matters that are irrelevant and unresponsive to the question. I move that the last statement be stricken and that the witness be instructed not to put in his own personal prejudices in the record but to try to confine himself to the facts.

Hearing Examiner Creel: Well, of course, I see your point of view. But, on the other hand, I take it the witness is expressing his own opinion. There is one thing I wish you would do, if you can, Mr. Altman. Can you pick out a particular city and tell us the names of the shoe outlets and the brand of shoes that they handle?

The witness said, let's take Columbia, South Carolina. In Columbia you have Berry's Department Store, which is an independent. He is a specialty store. He has independent brands. He has the better brands. I would say he has Town and Country, Capezio, Mademoiselle, I believe. He is not a Brown store. The witness knows this of his own knowledge. The other store is a specialty, which is two doors away, and that is controlled by Wohl Shoe Company. The name of that store is on the tip of his tongue. That is the next best or in the same category of the better stores in this town. He guesses Columbia is 100,000 population, though. He said, let's take High Point, North Carolina, that's 35,000 people. In High Point you have two people to sell: Hubert Shoe Store, which is an independent, and the other store—I am trying to think of his name. I will try to think of it as I go

along. In the meantime this is also not a Brown franchise store. In this particular town of High Point—it's about 30,000 or 35,000—there's two stores that's fairly good to sell. And then Belk's has a store there, Belk's Department Store, which we sell Belk's.

He thinks Belk's buy ladies shoes from different sources. They have quite a number of stores, he imagines 100 or [fol. 176] better. They have the best department stores all over the Carolinas. And then the other 3 units are lower prices, from medium to low, of which one is a Brown store, he thinks. He doesn't remember the name of that store. This is in High Point. He doesn't know if its a franchise store. But this is the pattern. That's a town of 35,000.

High Point is a 35,000 town. There's about 6 or 7 places to sell shoes, of which 3 or 4 are very poor, 2 are fairly good, and then 2 are good. That's a typical town. He just picked that out. He doesn't know whether Brown is franchised there or not. One of the stores there handles Brown shoes. It is one of them he happens to know. There is many towns he could name where it is closed in by the three. He is just using this as some kind of an example. He said, not to show any prejudice, I took one that I don't even know.

Q. Well, do you know a town that you feel is "closed in by the three," as you say?

A. Oh, I know many of them. Many of them.

Q. Now, you know this of your own knowledge? You have been there?

A. Yes. I mean I have got the records that I have been to. There's plenty of them. And much larger. And there's many that you can go to, practically any city you like, today, a small town, and there are—I have 25 men that will verify that there's no place left to sell shoes today of our type in those towns because they are either financed, inaugurated, by one of the big three, or they are into such a condition—Maybe should I stop again? I am getting off—

Hearing Examiner Creel: Perhaps. But I would like to know who you considered the big three.

The Witness: Brown, General, and International. All do over 250 million dollars each a year. With just oodles and oodles of subsidiaries, retail units, manufacturing units, making three profits—one from the leather department,

one from the producing-of-shoes department, and another from the stores. How can a little manufacturer today compete with that?

Mr. Burke: I understand you are quite hostile toward Brown?

[fol. 177] The Witness: Did I say I was?

Mr. Burke: I just gathered it from what you said.

The Witness: Oh, you gathered it.

Mr. Rogal: Can we have that remark of counsel's not taken down as a part of this record, Your Honor? It was interrupting into my examination.

Mr. Burke: I would suggest that this voluntary statement in regard to this matter be stricken from the record also.

Hearing Examiner Creel: No. I think I will let everything stand in the record. But I will strike his comment that these companies make profits from these three separate departments. I think he couldn't have personal information of that. You don't know that of your own knowledge, do you, Mr. Altman?

The Witness: I have never seen the records, but I know some of—I am a leather buyer, and I know that the leather department of the Brown Shoe Company buys leather, and it's held under a separate setup and billed and shipped to the factory and, I understand from many, many people for many years, at a profit. And then the shoes are manufactured and sold at a profit. And the records stand where the profit is bigger every year and in the millions. And then they have their outlets; either the Brown franchise, Wohl, Wohl plans, and all these other things, which is also a profit.

Hearing Examiner Creel: My ruling with respect to the comments regarding the profits of the three different departments will stand.

Mr. Burke: That would apply to his later statement, too?

Hearing Examiner Creel: Yes. Go ahead with the next question.

The witness is familiar with the term Brown franchise store. He thinks he knows what a Brown franchise store is. He got that knowledge through his every day work, with having sold some Brown franchise stores, working with [fol. 178] people who own Brown franchise stores, his

salesmen, and just every day knowledge of living in the shoe business.

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As to whether his company makes sales to stores, which he is aware are Brown franchise stores, the witness said, we have maybe one or two left of a very small capacity. Just a few. They are not still selling to Hill and Shipe, a Brown franchise store. It is a known fact it is. Everybody knows it and they admit it. They told the witness and they told his representative that they were. He thinks it was in 1953 or 1954 that he first learned of it. As to whether he continued to sell them after he learned that, the witness said, well, they didn't buy. Hill and Shipe have 5 stores. The two partners are affiliated with 4 or 5 stores. Norman, Ada, and Ardmore, Oklahoma, and Sherman, Texas. (Here the witness said he was reading from "some notes of some different people who we sold that were Brown or Wohl people who no longer buy from us".) In 1953 Hill and Shipe purchases were about \$10,000, in 1954 practically nothing, and in 1955, zero.

Q. Do you feel that you have an equal chance to sell to a Brown franchise store as you do to a non-Brown franchise store?

Mr. Burke: I object to the form of the question. It calls for speculation and an answer as to equal chance.

Hearing Examiner Creel: Overruled. I would like you to explain your answer after you give it, though, or in giving it.

By Mr. Rogal:

Q. Do you remember the question?

A. Do I have an equal chance?

Q. Yes.

A. I don't have any chance.

Q. Would you explain your answer?

A. Well, it is a known fact, we all know, that today these stores, these different large organizations, are fighting for more and more retail business. That's the ultimate aim. All of these purchases of retail units, all this taking over and [fol. 179] financing of these stores, is for one purpose.

Q. We are going off the point just a little bit.

A. All right. O. K.

Q. We are dealing more with the Brown franchise stores. You said, "I don't have any chance to sell to them."

A. I do not.

Q. Now, what is that statement based on?

A. That's based on the fact that if they want an item which I manufacture, Brown will make that product for them and tell them they will make it.

Hearing Examiner Creel: Do you continue to call on these Brown franchise stores?

The Witness: We try, but you get so discouraged—and we have been in the last few years—that it would be a joke. Like someone would give me their child in my house to feed it. It would be the same thing. They are going to take care of their children, and their children are going to take care of them; not their neighbors.

By Mr. Rogal:

Q. The question still was, you stated you have no chance to sell to a Brown franchise store. Now, has that been your experience? Is that what you are telling us? And, if so—

A. Well, let me say this: That with the additional field managers, the additional pressures that these organizations have put on, with their closed-in deal, which is a known fact, how could a small independent like myself have an opportunity to go in and sell against someone who gives them a setup of auditing, financing if necessary, instructions, window displays, all these many factors and many things which a little fellow, which Brown was at one time but not today, couldn't give them? How could they come to me as an independent? Or how could I have any opportunity against that? It's just something you can't combat.

Q. Do you think those are valuable aids to a retailer, that you mention?

A. To that retailer it's his life. It's like giving blood to anyone who needs it. After all, we know what's going on. We are all human. We can see. We can hear. The facts are that [fol. 180] they control. And if they didn't control there would be other products in these stores. And they are limited. Some of their stores may have other people's products,



but it's limited. Of the 700 stores I would say a very small percentage has other people's shoes.

Hearing Examiner Creel: Mr. Altman, when was the last time that you yourself called on a Brown franchise store and attempted to sell them?

The Witness: Well, I personally haven't sold any shoes. I do go out, sir, with my men.

Hearing Examiner Creel: Well, when you were present.

The Witness: Since it's been me myself, I would say it is 4 or 5 years.

Hearing Examiner Creel: Do you remember whom you called on?

The Witness: Well, I think in Texas we called on some Brown-built stores.

Hearing Examiner Creel: Can you give us the conversation that you had with the store operator, the substance of that conversation?

The Witness: Well, I remember in Dallas going into a couple of Brown-built stores, but, Your Honor, I don't really know.

Deb Shoe Company advertises in national magazines: Vogue, Mademoiselle, Glamour and Charm combined today, and Prom, also, Boot and Shoe Reporter and Footwear News, which are trade magazines. They also advertise in local pamphlets like little high school folders and things like the telephone books for the kids in different cities. Deb is the company's best known brand. Then they also have three other nationally advertised brands—Miss Deb, Demosette, and Fandango.

They have sold a store called Bomar's of Jackson, Mississippi. Bomar's has 7, 8, or 9 stores. They are not selling to them now. That's a Brown set up today. They have sold to Clarence Fafiak of Cleveland. He has quite a few Fafiak [fol. 181] stores around Cleveland. He is also 100 per cent Brown today. The witness is sure of that. They were selling them at one time, but they don't today.

David's Shoes is an example of a Brown store they do sell. It is located in Phoenix and the Mall suburban of Phoenix. David's is two young men who are friends of the witness. They are independent, and they are close to Brown. They do a good Brown job, but they haven't been able to take this over 100 per cent. He said, they continue to

buy some outside shoes, my line and 2 or 3 other nationally advertised lines and there are other stores that I know of this type while the majority of the Brown plan stores are 100 per cent. There are some that I know of that are not of this type. That's why I said there were 2 types. This is one that he can sell to. His volume is fair. They do a nice job with Deb's shoes.

His company has sold to the Westwood Bootery at Los Angeles, California. They are not selling them now. They last sold that store about 2 years ago. They are not selling now to Phillips Bootery of North Hollywood, California. That's a Brown store today. They formerly sold to them. They are not selling now to Harold's Shoes in Pasadena, California. (The witness is reading from a list that is in evidence as Commission's Exhibit 23, which is a list of Brown franchise stores.) They did.

His company is not selling to Howe's Shoes at San Bernardino, California. That store used to be a customer. It ceased being one of their customers about 2 years ago. They do sell to Sebastian's Shoes at Santa Ana, California. They still sell him a few shoes. He buys one particular shoe, one or two. It's a particular type that no one else makes but them.

#### Cross-examination.

The type of shoe that his company manufactures is a high fashion shoe. As to whether high fashion shoes have a tendency toward being replaced by other fashion, and whether it is a fashion of short duration, the witness stated [fol. 182] that shoes which they produce this year are produced by the big people the year after.

As to whether the witness makes a general line of shoes or whether his shoes are known in the trade as a "short line" of shoes, the witness said he makes the longest line of factory shoes in the business. His shoes are unique but they also have plenty of competition. Rhythm Step is not a competitive brand. Neither is Allures. Town and Country is a competitive brand. Naturalizer, Life Stride, Air Step, Glamour Debs and Risque are some of the other competing brands. Those are Brown shoe brands. Others are Capezio, Adoree, Town and Country, and Jolene of Tober-aifer in a way. Arthur Murray Flats are out of business. Lucky

Stride is a competitor. So is Vitality, in a way. Natural Bridge is not a competitor. Queen Quality is a competitor, in a way. So is Fiancee. When he says "in a way" he means that they may have one or two, a short part of their line similar to his line.

Red Cross shoes compete in a way. They make a few welt shoe types, but limited. As to the difference with regard to Red Cross competing in a way with his line and Air Step directly competing with his line, the witness said Air Step is much more fashionable. Also, Naturalizer has many other things that Brown makes that are brought in, like wedgy types and various other types which are different than Red Cross.

A line like Naturalizer would offer the retail merchant as many things as he could possibly get to get the business. His line is not 100 per cent the equivalent of a line like Naturalizer. Naturalizer and Air Step today are becoming more of his type or making inroads to his shoes of fashion. To get that additional business Air Step is one with a staple line. In other words, they are becoming very much more up to date. That's one of the factors that makes the competition he is faced with somewhat difficult. There are many of them.

His company has some 1600 to 1700 customers. All of their customers are makeup customers. They do have a few in stock, a few shoes, staple, more staple, he would say. [fol. 183] They will take 3 or 4 or 5 of their patterns and they stock those in a small way. Their business is principally a fashion makeup business. They have samples and their men go out and sell these shoes to the customers and all of those shoes are makeup shoes. If a customer orders it, it is made to his specification. Now Brown Shoe Company goes out and they have makeup, but they have definite stock shoes also. Naturalizer is both a stock shoe and a makeup shoe. They have certain patterns they don't gamble on. Those are only for makeup. Then if they can get enough of their franchisers to take those shoes, they will put them in stock. He is talking about the Air Step as well as a franchise store.

As to whether he regards all independent shoe stores that handle Naturalizers as a franchise operation, the witness said no, that's a Naturalizer franchise. There is a dif-

ference. There is a complete franchise like a Brown franchise store, and then there's an Air Step franchise. This is his opinion.

As to whether that's the basis which he used to refer to franchise somewhat frequently during the course of his examination, the witness said, no, sir, don't get me wrong. When you are in Atlanta, Georgia, you have a franchise downtown, Rich's. Brown Shoe Company has. That's their franchise downtown. That's a Naturalizer, Life Stride, whatever they make. They sell Air Step and Naturalizer in the same store. In every department they have got a different set up of shoes. Just like Litt Brothers. They just took over Litt Brothers. As to where he got that information, he is there, he sees it, he gets it from the buyer. Litt Brothers store is in Philadelphia. That's one of the largest, if not the largest, Brown franchise stores in America. It's one of the largest department stores downtown in Philadelphia. And they have 4 or 5 suburban stores, like Famous Barr. The witness would call Litt Brothers downtown a Naturalizer franchise. And he thinks Brown Shoe Company does too in their correspondence. He wouldn't swear to it. He hasn't seen that in writing.

The witness was asked whether he has the reputation in the trade of using the maxim that he sells to "everybody [fol. 184] but the barber shop." He said, yes. And may I quote Mr. Schaefer, your vice president, that "Now we are following in the steps of Jack Altman, we are also selling the barber shops." For example, in Cleveland you have 4 Air Step accounts where you are supposed to have one, and they are all repeats. They are all franchise. Air Step. The names of these stores are Higbee's—last year they were selling Higbee—Halley Brothers, Stone's and the May Company store, Taylor's, William Taylor. That's a May Company store, and that's a franchise. All four Air Step.

The witness testified in the United States District Court in St. Louis in the case of *United States v. Brown Shoe Company and Kinney Company*. Testimony of the witness in that case, that one of his favorite maxim's was that he sold everybody but the barber shop, and that he sold everybody, was read to him. The witness recalled that testimony.

The 1600 to 1700 customers of his company are based on the sales activities of their 25 salesmen. He lost some sales-

men this last year. He loses some every year. He lost one good producing salesman this last year. The reason that salesman departed is because the witness wanted to put on an additional man in this particular area to try to overtake some of the business that he lost because he had 45 units with Wohl Shoe Company, of which today he has zero. And a lot of them were on the West Coast. And in order to keep his business today—and he has done it in many areas—he has had to put on additional men in little towns to try to overcome the business because of the squeeze. Many of these 45 units are on the West Coast. Some of the best. That was in the salesman's area that he replaced.

It is not the witness' position that only the lines of Brown Shoe Company compete against him directly, such as Air Step and Naturalizer. All of the other names he gave were bidding, you might say, for the independent retailers' business. Everyone in the normal course of business has a turn over of customers, including Brown. He has lost customers for a wide variety of reasons that are commonly found in the retail merchandising business. But the [fol. 185] biggest loss is due to either being purchased, financed, or taken over by someone else.

He doesn't sell W. T. Grant and Baker's. He does make up shoes for Edison Brothers. The only one he lost was a million and a half dollar business to Wohl. That was in 1956 or 1955. He testified before that that's why he doesn't have a business today. And he guesses after this he won't have any; he will be out of business. In 1955 he did \$1,300,000; in 1956 he did \$886,000; in 1957, \$640,000; in 1958, \$225,000; in 1959, \$80,000, and this year we have got so far as about \$7,000 or \$8,000. Which means that from \$1,300,000 it's down to about a \$20,000 a year business.

As to whether there was a decision made that for some reason they did not like his shoes, the witness stated that the Vice President of Wohl Shoe Company made a statement to him that he was the man that came to Wohl Shoe Company when they had a young business, that he built up that business, that they have a great need for the witness today, that he would like for the witness to be selling them again. As to whether perhaps they found other sources for the same type, the witness said, yes, sir, Brown Shoe Company. A big majority from the Brown Shoe Company. The

witness knows where his business went, the majority of it. He knows the men he worked with, who they buy from, and he was pretty close to them.

Other companies compete in styles and make shoes similar to his styles. Brown or any other—his company comes out with fashion shoes. It comes out with say 500 shoes. If his company has 4 or 5 excellent shoes, and they know it and they are selling good, then so to speak they “knock those shoes off” the following year or the following season. It could be that this is true of every other shoe company, that they are apt to make similar shoes that might be regarded as hot numbers. It is not always a fact. There are others besides Brown that do that too. And of course when they fill out their lines with these new fashions, it naturally affects the same model that he produces. And that’s what happens in the shoe business.

[fol. 186] Redirect examination.

The witness changed or lost a salesman last year, in California. He has a salesman that Brown would have liked to have. They tried to hire him, but he went with someone else. He left the witness’ company and went with some other company. No part of the lost sales for that year was due to that fact. His sales are just as good in that particular area because he put on two men. In other words so to speak they “beat the bushes.” (Tr. 358)

There is a distinction in his mind between a Brown franchise store and what he termed an Air Step or Naturalizer franchise. He said, a Brown franchise store is a complete store of Brown shoes—and just try to get anyone else’s in. When counsel for the commission was questioning the witness about Brown franchise stores, that was what he understood was a Brown franchise store. As to why the witness called a store that happens to be buying just Naturalizer a Naturalizer franchise, the witness answered, well there are several words you could use. You could call it “franchise.” You could call it “agent.” You could call it “representative.” You could call it any of those names. But would you say Rich’s in Atlanta was a Naturalizer franchise, or would you call him a Naturalizer agent, or what would you call him?

As to whether there is a clear distinction in his mind be-



tween a Brown franchise store and a store that has Naturalizers such as Rich's, the witness said, I just gave that. A Brown franchise store is a complete line of Brown shoes, dominated 100 per cent, or up to maybe 1 per cent or 2 per cent of some auxiliary items. But that's a Brown franchise store. In Brunswick, Georgia, they have got a store that's a 100 per cent Brown franchise store. In Atlanta they have an agent which is a Naturalizer agent or franchise for that one brand.

The witness would think that this Naturalizer agent or franchise such as Rich's get all these additional benefits he described when he was discussing a Brown franchise store. As to whether they get the benefits of the regular franchise program, he said, not naming that store. I know lots of stores where I couldn't begin to compete with what Brown [fol. 187] will do or does to stay in the store. I am not big enough. Brown gives its customers benefits; they take mark downs; they give them special merchandise; they do lots of things.

#### Recross-examination.

The franchise store in Brunswick, Georgia, referred to by the witness in one of his answers is a little store. Quality Shoe Store is its name. He knows as a fact that it's a franchise store, 100 per cent. And that's the basis on which he makes these statements.

With regard to the store mentioned in Atlanta, Georgia, Rich's, that's a department store. The witness also sells shoes to that store. As to whether that is what he characterized as being a form of franchise he said, I consider two types of franchise. If it's an automobile agency, Ford has the franchise, see. If a store in Cleveland has Air Step shoes, he is the Air Step franchise. From a child I have known that to be an Air Step franchise. However, this term of a Brown built store or a Brown built franchise or Brown franchise is a complete store of Brown, all their franchises. The witness didn't say that none of these complete franchises can buy other shoes. He said, 90 per cent of them don't have any other shoes. That could be a preference of the individual store owner, "with pressure." It could be their preference. But also there is other things to make

preference. How do you term preference? The witness agreed that he and his salesmen tried to make a preference in favor of their shoes when they talk to a retail merchant, but not under the same set up.

#### Redirect examination.

With respect to the store in Brunswick, the witness personally visited the store in Brunswick 2 months ago, Christmas, when he went to see his mother. He talked to the man. He examined his stock. He talked to him in his store just as a friend because he knew him. His name is Whilden. He talked to him and his wife just a month ago. He has been many years a 100 per cent Brown franchise [fol. 188] store. They allow nothing else in the store. The witness drew his conclusion from just looking around. He didn't discuss whether the store was on the Brown franchise. Why should he? He didn't want to embarrass himself or the man. The witness did not try to sell him any shoes. That opinion is based upon what he saw in his store, and the witness knows what it is.

#### Recross-examination.

As to why the witness didn't try to sell him any shoes, he said, why should he buy shoes from me when he is 100 per cent Brown. Just like all of the others. The witness does not think that when a store carries a complete line of shoes that would satisfy his needs in serving his customers. He would like him to have their shoes there. As to whether he would have an inventory problem, the witness said, if he did your subsidiaries of Wohl Shoe Company wouldn't be carried over when they take over a department. And the day they come in we come out. But they do put in lock, stock and barrel as many Brown franchises as they possibly can, and then they augment that because the store managers want other brand names to try to do more business. As an example of what he is talking about, he cites Blumberg's, Dothan, Alabama. The day Wohl walked in, we walked out. We were there for 10 years. Oppenheim-Collins, 12 stores. The day they walked in, we walked out. They took over last year.

May 3, 1960

J. R. JOHNSTON, recalled as a witness for the Commission, resumed the stand and testified further as follows:

Cross-examination.

He is the same Mr. Johnston who was here last March and previously testified and identified himself as the man in charge of the franchise stores division of Brown Shoe Company. In that capacity he is acquainted with the program that has been referred to as the Brown franchise store pro-[fol. 189] gram and the purpose for which that program was designed. The purpose of the program is designed to be of assistance to independent shoe retailers. Assisting the retailer in the function of his business, in sitting down and counselling with him from time to time, and for any suggestions that are possible for the witness and his staff of field representatives to make that might help the retailer be a better merchant and these discussions involve many subjects that are in the best interest of his business. That is the broad description of the purpose of the program.

An independent shoe retail merchant does not have to belong to this Brown franchise store program in order to sell Brown brand shoes. The witness was shown Commission's Exhibit 25, the Franchise Agreement. That agreement outlines the various things that a franchise store has available to it on becoming a member of the Brown franchise store program.

The witness agreed that the first page of Exhibit 25, which is 25-B, since the cover is 25-A, says that a certain number of services, architectural plans and field representatives, and the like are extended to franchise stores which become members. The franchise store is not required to adopt all those services which are furnished. It is a personal decision for that merchant becoming a party to this program. The witness as head of the Brown franchise program does not force those benefits on them. The benefits are designed for the purpose of helping the store owner in the conduct of his business.

The independent retail store owner who becomes a part

of the Brown franchise program does not have to accept any of these services that are provided under the program. The retailer makes the decision as to whether he takes any of these services. They are offered for the convenience of the retailer.

The witness has been connected with the franchise stores program approximately 8 years. He would say that the biggest problem that confronts the retailer is his ability to do a real good profitable merchandising job. The Brown franchise store program is very much directed to that end. The [fol. 190] dealer is provided a merchandising system that, when used as it is intended to be used, helps the retailer to be in a good position to make decisions for himself that are in the best interests of his business. It helps him analyze the various classifications and items and brands of merchandise he is carrying in the store and after an analysis, however often he might choose to make that analysis, it helps him make decisions regarding the future of any of those items or classifications for lines that he might be carrying in his store.

In addition to the merchandising system they are also provided an accounting and bookkeeping system. These are for the convenience of the independent retailer. He would think the problem of merchandising is just about the number one problem. What is meant by "merchandising" is the kind of a job a retailer does with an inventory of shoes that will cause him to turn in as profitable a performance creates a problem in the operation of the independent shoe for himself as he knows how. As to whether inventory store the witness said, some yes, some no. Some retailers are able to do a better job of merchandising an inventory than others.

An illustration of a better job of inventory merchandising would have to use an approximate average that is accomplished by a family shoe store or family shoe stores across the country. A good merchandising performance of an independently owned family shoe store would be approximately two times turn a year. That is, turning an inventory twice a year, two, two and a half times. He would consider that an average performance. He thinks the average inventory turnover for 1958 was 1.9. That is an average. He would recommend a two and a half time turn.

As to whether the witness wouldn't recommend as high as the man could go, he said, he recommends a two and a half time turn for the family shoe stores. That is his recommendation in view of that retailer doing the kind of a volume job that would cause him to reach a great percentage of customers, by not losing any more than a minimum number of sales of customers who come into the store. It [fol. 191] would be fine to turn an inventory five or six times a year, but when he does that he is missing business. He doesn't have the size of the inventory. If you turn too fast you lose business. A high inventory can be a misleading figure to the general doing of business.

This is one facet of the inventory problem of losing sales. It could have extremes both ways. When turns are too slow, that oftentimes results in an excessive amount of obsolescence within that inventory which causes many customers not to be interested in a greater percentage of the merchandise that retailer might be carrying in his inventory, because of age, fashion-wise. Some of the shoe inventory is seasonal. That is in the area of obsolescence, style as well as seasonal. Obsolescence has a great bearing on what that retailer is able to sell that piece of merchandise for. And they often say in the trade today that a piece of merchandise is only worth as much as the customer is willing to pay for it. In the shoe business there is a tendency to have a greater percentage of obsolescence than in other types of business, particularly hard lines, hardware and things of that nature, where there isn't the style and the pattern and the colors, and material changes that come about in the shoe business.

The witness feels that the shoe business has a critical area in regard to this inventory situation. He regards that as perhaps the greatest single problem a merchant in the shoe business has. The longer merchandise is in a store and is not being sold, it has a tendency to depreciate in value in the eyes of the consumer. He gets rid of it by putting on clearance sales. Also by merchandising them out of his stock with an advertised clearance sale on occasion. Sometimes he sees fit to sell merchandise to what we call jobbers in the trade and cancellation stores.

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[fol. 192] As to the matter of shoe inventory in an average retail store, the witness said, we believe, and perform-  
[fol. 193] ance will pretty much substantiate our belief, that a dealer who concentrates on as few lines as he possibly can will do the best job for himself. There are a number of factors that enter into it. When a person concentrates on as few lines as possible, by and large there is considerably less advertising expense, because it is only necessary for him to advertise fewer lines, and by advertising fewer lines he can make a greater impact on his market by having the names of those brands in the press and on the radio and whatever his media of advertising might be. He is in a position to keep those names in the minds and in the eyes of the consumer more often. When the witness says line or brand, he is referring to the same thing.

From a merchandising point of view it, by and large, causes the retailer to have less merchandising problems. He has fewer salesmen calling on him. The more salesmen you have calling on you, the more you are tempted to buy merchandise that perhaps you might not need in your store. The more salesmen you have calling on you, the more exposed you are to having a larger inventory. That happens quite a few times to quite a few people. It depends on whether your salesman has more sales ability and your resistance might be less than his sales ability. It generally results in a greater unbalanced inventory. If you got into several lines that might directly conflict, it would cause an unbalance in inventory. The reason is that if lines of shoes directly conflict, as that interpretation is understood in the industry, there are in most cases very important patterns in those conflicting lines. They very often would be the best selling patterns in each conflicting line, because of them conflicting so to speak. And each of those salesmen is naturally going to try to sell the retailer the most important patterns in his line, because those are the patterns he feels the retailer can do a greater job with, and as a result it causes the salesman to do a better job from the standpoint of getting larger orders. They are interested in getting sizeable orders from the dealers, as large as the traffic will bear so to speak, and if you have patterns that directly conflict with each other, in conflicting price lists, it very often results in the dealer and the salesmen having conflictions of



[fol. 194] stocks, because those salesmen are naturally interested in having their line placed with the dealer.

By conflicting price lines the witness means the same or comparable price lines. It might perhaps vary fifty cents a pair or a dollar a pair.

Hearing Examiner Creel: One of the witness in St. Louis that I am sure you heard—I have forgotten who it was—he thought that a shoe dealer would be well served if he would select patterns from many lines that he thought would sell well in his own store.

I don't recall whether he said conflicting price lines. He was talking about fast-moving patterns. Do you agree?

The Witness: I would agree if I were a manufacturer. But from a retailer concept, I disagree.

I think I remember the witness who made that statement, and I have to say he was speaking from a manufacturer's point of view. But from a retailer's point of view as I mentioned a few moments ago, if a retailer would buy spot items, or hot shot items, or buy this one from this manufacturer's line and another from another manufacturer's line, it places a greater share on his shoulders to be meaningful in his community from the advertising point of view to say nothing of the problems that it causes from his own merchandising point of view.

Hearing Examiner Creel: Well, I thought from what you said before that you probably disagreed with that.

The Witness: I disagree with it from a retailer's point of view.

As to the effect on retailers, in most cases it results in unbalanced inventories, inventories that might be excessive. When you have a combination of excessive inventories and unbalanced inventories, generally you are headed for retail troubles, because it doesn't work satisfactorily.

In his experience the witness would say that the average independent shoe retailer is not able to successfully make [fol. 195] this type of selected purchase or hot-shotting. The average independent retailer lives in a small world, so to speak, and he does not have the opportunity—he has the opportunity but he just does not go to the market. He does not go often enough to keep himself abreast with all of the new things that come out from month-to-month, season-to-

season. He does not have as great an opportunity for exposing himself to the actual goings on in the industry as the larger retailer does, who possibly travels to market 4 or 5 times a year, and is exposed to the many more facets of the shoe business than the average independent retailer in the town of 5, 10, 25 or 30 thousand population, because that independent retailer does not travel that much to expose himself to all the new lines.

In regard to the Brown franchise program, as to whether the program is designed to provide that this independent shoe retailer will concentrate his lines on Brown brand shoes, the witness said, No. It is intended—we encourage concentration, yes. They encourage concentration for all the reasons he has discussed as being one of the chief problems of operating a shoe store. And that is the substance of the following clause which appears on page 25-C, Commission's Exhibit 25-C: "I will concentrate my business within the grades and price lines of shoes relating to Brown Shoe Company franchises of Brown's Division, and will not have lines conflicting with Brown's."

Hearing Examiner Creel: Let me see if I understand that.

Are you saying that you do not concentrate on selling Brown lines to the Franchise account?

The Witness: Absolutely not. These stores buy many other lines.

Hearing Examiner Creel: That is not any concern of yours. It is your concern to sell as many of Brown's lines as you can.

The Witness: That is correct.

The witness encourages these stores to concentrate on the Brown lines within their grade. The independent shoe merchant is not required to carry Brown lines exclusively. [fol. 196] He makes that decision. The independent store coming on the program is not required to come on the program in order to be able to buy Brown brand shoes. He can buy Brown brand shoes without being on the program. The decision of getting on the program is left up to the independent shoe merchants. The dealer makes the decision as to whether he wants to, after Brown makes him the offer. Brown invites him. If he wants to go in the program he can

decide to or not. But that is not a condition to his being able to buy Brown brand shoes. And if he goes off the program he can still buy Brown brand shoes. The witness would say this happens in very instance that he knows of, if the store continues in business.

The decision of stores on the program to carry other lines is a decision that the store owner makes for himself. A store owner on the franchise program is not in any way prohibited from dealing with or buying shoes of other manufacturers.

As head of the Brown Franchise Division the witness has knowledge that the Brown franchise stores carry brands of shoes other than Brown brand shoes. He got that knowledge from actually seeing it in shoe stores, and from written and verbal reports he has received from their field representatives. He cannot tell the exact number of franchise stores carrying brands and lines other than Brown, but he does know that it exists. He would say a minimum of 80 percent of their stores carry other brands. Some brands are conflicting.

In regard to those stores carrying any other brands which may be conflicting, not all of them are continued on the franchise store program. Asked why not, the witness said, carrying a conflicting line might also involve other reasons as to why they might ask a dealer to withdraw from the franchise program. For illustration, if a man is carrying a line that directly conflicts with a Brown Shoe Company line and the line he is carrying for Brown ceases to be an important part of his business in that price category, and if he possibly might be a credit problem, or he might not be keeping the reporting system as requested, [fol. 197] which is helpful to him to do a good job for himself, they very often find ourselves in a position of not being able to offer suggestions and be of much help to that man any more.

If the Brown brand the man carried ceased to be an important part of his shoe store operation by reason of conflicting lines that he is carrying, that affects the ability of witness said, because the line he might be carrying would the franchise program to function. As to the reason, the be a direct conflict. We are not familiar with that line, how that line functions, and its services and style not as we are

familiar with our own Brown brand. So we are just not in a position to sit down and work with that man and discuss the intimacy of his business, the segments of his business, because we are not familiar with the lines' functions that he might be buying, that are in direct conflict with our line. The witness has reference to the activities of the fieldman under the franchise program in dealing with the store owner. That is what he meant by "we" when he said "we are not able to" do certain things. That is one circumstance under which stores might be asked to withdraw from the program.

Other circumstances might be such as credit. They might not be able to get along with that dealer for many reasons. The dealer, for some reason, might not be too anxious for the fieldman to call on him, or he might take it upon himself not to divulge the intimacy of his business for personal reasons. When a field representative is not in a position to call on a dealer and discuss the operations of his business with him, and when the fieldman's functions ceases to be helpful to the particular store, that might be one of the reasons that they would ask the store to withdraw from the program, if the fieldman's services cannot contribute anything to the success of the store in the way of consultation.

In other words, the program initially is being set up to help the retailer or the retail store, and if the retailer or store owner in effect rejects their help or doesn't co-operate, they necessarily ask him to withdraw.

Hearing Examiner Creel: That is what I don't understand. [fol. 198] stand. Why is your company concerned about it? These services, of course, cost something, but if a Franchise dealer doesn't want them, if he just wants to operate his business in some other fashion, but continues to buy from you, why do you care whether he continues to be a Franchise account or not? You want to continue selling him those lines, I presume. What difference does it make whether he continues to be a Franchise dealer or not?

The Witness: It is merely a matter of record, in numbers, that is all. It is whether we have 683 stores today or 682 tomorrow because of a store having been removed from the list. It is just by the number.

Hearing Examiner Creel: If he doesn't avail himself of

the services it doesn't cost you anything to continue him as a Franchise account, does it?

The Witness: No.

Hearing Examiner Creel: But you have a policy, I understand, that if he doesn't want to work with you you more or less have no purpose in continuing him on the Program. Still I am trying to understand. As I understand it, you don't change your relationship. You just don't call him a Franchise account, is that correct?

The Witness: That is correct.

By Mr. Burke:

Q. The man still, in most instances, remains a customer of Brown's, is that correct?

A. Yes.

As to what the term "franchise" means when used in connection with franchise of shoes, or franchise agreement, or a franchise for my retail shoe business for the following advertised brands, the witness said it means customer. When an earlier witness talked about certain stores having franchises and certain brands of shoes it merely meant a customer or dealer. A retail store when it goes off the program is still a Brown shoe customer if the owner chooses to be. So to that extent this Brown shoe franchise as a customer would not be terminated. He would just no longer be [fol. 199] a franchise store. That would only be dealing with the scoreboard that the witness keeps in his department.

The witness said it might be a little helpful to explain why they named it a program, the Brown franchise program. Many years back it was known as a Store Plan Division. For many years it was the Brown-Bilt Division, Brown Plan Division. Approximately 15 years ago the name of the division was changed to the Brown Franchise Division, simply because they thought the name Brown Franchise Division was a better name. He wouldn't say that it made the retailer think he was getting more. It was just a different handle, so to speak.

Q. I notice in this, what has been referred to as the Brown Franchise Agreement, there is reference to the fact that either party may cancel on 30 days' written notice to

the other. Is that followed to your knowledge in any strict manner?

A. No.

Q. If a Franchise Store owner chose to withdraw from the Program he could do so immediately if he so desired?

A. Yes.

Q. Is there any purpose for having the 30-day provision in this document?

A. Well, about the only purpose, the real purpose, that I would know of would be making it convenient for the retailer if he is carrying hazard insurance, which is made available to him through Capen & Company agents, the agency handling insurance for some of our Franchise Store owners, naturally he would want to convert that insurance coverage with a local agent. And that gives him ample time to convert to the local agent his hazard insurance, and in many instances that period of 30 days is extended.

Q. Is that insurance matter handled between the Franchise Store owner and Brown Shoe Company or the, what was the name of that company?

A. Capen & Company. C-a-p-e-n & Company.

Q. Does the Franchise Store dealer deal with them?

A. Yes, and it would also give time to set up a new accounting system.

Q. Would he need to?

A. He might continue with the accounting system, the bookkeeping system that he had previously established.

[fol. 200] Q. There is no reason why it could not continue if he so desired?

A. That is correct.

The witness was asked about the insurance provision requiring the franchise store owner to carry insurance on stock and fixtures, preferably through Brown Shoe Company. Although on direct examination he did not recollect just what the reason was, he has since given it consideration. They do prefer the retailer carry this hazard insurance with Capen and Company. They prefer that primarily so that as an account of Brown Shoe Company they are reasonably sure of the amount of coverage that he carries and they are sure that he is carrying hazard insurance in case of disaster of any kind so that he would have the protection and the coverage. Another reason is because of the



very good performance record that the various claim adjusters working through Capen and Company have had in settling claims over the years. They do have an excellent performance record, and you don't always have that. You sometimes have difficulty in always getting a prompt and adequate claim adjustment. Brown has the assurance of a satisfactory insurance carrier because of the record. Nobody guarantees it. But this company does have a record of good performance.

As to whether it is customary in the shoe business, from a credit standpoint to have customers insured for risks of that nature, he thinks it is a request that Brown's credit department makes. He does not know if their credit department insists on it. That is made whether they are a franchise dealer on the franchise program or not, for credit purposes. Brown is not the beneficiary under that insurance if a franchise holder or any other customer is indebted to Brown. The insurance is for the purpose of evidencing the financial responsibility of the retailer in the event of a casualty, so that the manufacturer may have some reasonable assurance that he may get paid for stocks that may get burned up. It is a general rule, not only with Brown Shoe Company, but a general rule throughout the industry. When you are doing business with a person you like to know he has hazard insurance for that purpose.

[fol. 201] Regarding the various benefits under the plan that the witness previously testified to, it is up to the individual store owner to decide whether he wishes to adopt any of those benefits that are offered.

Q. Do you have any opinion, Mr. Johnston, as to whether these benefits under the Franchise Program, whether it is these that keeps the store as a customer of Brown's, or is it the shoes?

Mr. Rogel: I object to that question. It is highly speculative.

Hearing Examiner Creel: It seems to me it is. I will sustain the objection. Obviously both play a different part with different people.

Mr. Burke: I think, if your Honor please, this witness has been the head of the Division, certainly has been able to form an opinion as to relative importance of these mat-

ters, due to his long experience in connection with the program. If anybody knows he certainly is the person who can properly state an opinion. I think it is a perfectly valid question.

Hearing Examiner Creel: It is too speculative to have any meaning to me. Obviously, nobody wants to buy shoes that aren't any good. That would be the first consideration. That would be the quality of the product.

Mr. Burke: I will accept that as an explanation. I will agree. I wanted something on the record.

The witness testified on direct examination that he can recognize a store design that may have been designed by the architectural service of the Brown Shoe Company. He answered that question in the affirmative because of being so familiar with Mr. Harold Moore who heads up that division in their company, the types of display and many of the brand identifications that Mr. Moore suggests to the retailer or puts in or incorporates in the suggested plan. The witness recognizes his style. That was the connotation in which he so testified.

The report form of the field representatives, shown by Commission's Exhibit 30, is not presently being used to-[fols. 202-206] day. That form was discontinued approximately a year and a half or two years ago. Another form has been used since that time. The present form eliminated the reference found on the last line of Commission's Exhibit 30, "Encourage concentration on BSC and elimination of conflicting lines." There were other changes on the form. As to whether that is a form on which the fieldman reports to the witness, he said, they formerly reported to us on that form, but not on all occasions. Many occasions it was just a written form, a regular inter-company (Tr. 407) correspondence, or the fieldman's personal company stationery. They were not always required to make that report on every call that was made to the stores.

. . . . .

[fol. 207] The witness recalls discussion during his direct examination relating to purchases by franchise stores of U. S. Rubber Company products. Under the program franchise store owners are not required to purchase from U. S.

Rubber through Brown. That is a decision that is made by the independent retailers. The franchise store owner in purchasing rubber goods from the U. S. Rubber Company deals with the salesman of the U. S. Rubber Company. The terms of the sale and the normal dealing in regard to the purchase of U. S. Rubber products are handled between the U. S. Rubber salesman and the franchise store. Brown doesn't have anything to do with that. The stores on the franchise program are free to buy rubber goods from any manufacturer that they choose, and they do. The franchise dealer makes his own decision on that.

#### Redirect examination.

The dealer is not required to accept any of the services listed on the first page of the franchise contract. On the second page of Commission's Exhibit 25-C, paragraph 4, it says that he is required to maintain and use a merchandise record system. The witness did not testify that that would be one of the reasons, along with others, that a dealer might be dropped from the program, if he did not keep **this** record system. The witness said, not that record system, a record system. That might be one of the reasons. It does not have to be specifically the record system we offer him or provide him, maybe it is an equivalent.

They request the dealers to make certain reports to Brown. Some make monthly reports; some make quarterly reports; some make semiannual reports; some make annual reports. Failure to make reports could be one reason for dropping them from the program. As to why they insist on the reports, to the extent that they do, the witness said, we ask that the dealers use the bookkeeping and ac-[fol. 208] counting system which, when used, provides a report. He has a copy for his files and in turn he sends Brown Shoe Company a copy of that report, simply because when that is done the performance record pretty much proves that function causes him to be a better retailer for himself.

These reports have value to Brown. The witness said, we refer to those from the credit point of view, to see those that we get the reports from, and we enter that information in our books. We would see where his liabilities are, we would periodically make an analysis of the report out

of St. Louis, based on the experience ratio of his business, his withdrawals that he might make personally, his ratio of net profit in relation to sales; and many times we make suggestions from our point of view that he might think will be helpful to him in strengthening his position. I know of a number that we do periodically. We keep a very close contact with them based on performance of their business from a profit point of view, from an inventory point of view, and this is done so that we can offer help, and make helpful suggestions that will aid him to improve his position.

. . . . .

The witness was asked about the changes made on the form of the Brown franchise field reports, referred to in cross-examination as Commission's Exhibit 30. He said, I think the first page is very similar to this with the exception of deleting this information right here. (Indicating) Then we were getting too vague reports from the fieldman as he called on the stores. He would just write a letter. We thought if we provided a form that covered the various phases of the business that it would prompt him to have discussions with the dealer on various phases of the dealer's business and set out various paragraphs to call those things a little more specifically to his attention, so he would more or less write regarding specifics on various phases of the operation. The elimination of the bottom line on page 30-A did not incorporate a change in practice. The fieldmen are still instructed to encourage concentration and the elimination of conflicting lines.

[fol. 209] Certain reports from the dealers are needed for credit purposes. That is why he mentioned earlier that some stores send reports only on a quarterly basis, and semiannually, and some annually. It might be a profit and loss statement or operating statement that they might have made up for themselves by their certified public accountant on a quarterly basis, if they did not use Brown's reporting system. That information that their auditor or their certified public accountant makes up for them, provides Brown's credit department with adequate information so that they can see the status of the business on a quarterly basis, or semiannual basis, or an annual basis.

The witness believes that insofar as Brown Franchise Division is concerned, they made no attempt to tell a dealer when he should have the recommended semiannual sales. He is speaking of his own division. Also, Brown announces through the trade papers semiannually when the suggested clearance sales periods will start, and they have many dealers he knows of that either break with the sale before, and some break after. When the witness has a complaint from a store that someone else has broken early, a month early or a week early, that is pretty much a problem of the individual division and he doesn't think he's qualified to answer. The witness would refer it to the selling division.

Regarding concentration on the line of shoes, they don't say [retailers] shouldn't have conflicting lines, they only encourage them not to have. That is completely from the standpoint of good retailing and not anything else. The prime reason for this provision in the franchise is that they thought it was good retailing not to carry conflicting lines. As to whether their paragraph requires them not to have lines conflicting with Brown lines, he said, that is the Brown Shoe Company lines, brands that he is carrying, not Brown Shoe Company, period. The Brown Shoe Company brand he decides to carry. Brown has lived with the situation where a man drops Roblee lines entirely and takes on another line. They have also lived with the situation where he keeps the Roblee and takes on another line and keeps the two of them. From the retailer's standpoint it would not be economically good business to carry both. He [fol. 210] should carry one or the other. That is the witness' premise of good retail thinking.

Q. Well that isn't exactly what this paragraph provides. It says, no lines conflicting with brands of Brown Shoe Company.

A. The Brown Shoe Company brands he carries. Naturally, if a man isn't going to carry a Brown Shoe Company brand, why then, he isn't going to carry the brand in that price category. He can so choose if he wishes; he makes the decision.

As to where they draw the line between dropping him off the franchise program and keeping him on with respect to conflicting lines, the witness said, well, let us assume a

dealer would be carrying Naturalizer shoes, which is one of our better grades ladies' lines. That was the line and the man decided to buy Red Cross shoes, directly conflicting price-wise, pattern wise. He makes the decision. What that man purchases from Red Cross would increase to the point where his Naturalizer purchases would decrease, where we could no longer find ourselves in a position—I am speaking now of our field representative—to go in the store and counsel with the man on his merchandising efforts with Naturalizers, because he had decided to buy Red Cross, and possibly replace Naturalizer with Red Cross.

We find ourselves in the position of not being able to be of much help in counselling with the man, because we are not familiar with the Red Cross function, not as familiar with the many functions of their business as we are with ours. So how can a field representative sit down and consult with a person on a line that he is totally unfamiliar with?

As to whether he could still consult on others, say Buster Brown's that were still in there, the witness said, yes, but the man has made his decision and as we discussed or as I testified, the program is particularly designed to encourage a helpfulness to the retailer and also on concentration. Now if the man so elects not to concentrate with us, that is his own choice. There are plenty of successful retailers, concentrating on a few lines, not us, but they do real well on an average, and that is why we [fol. 211] feel the net result of concentration is the best route to take for the most successful family shoe store business.

Concentration in women's shoes pretty much depends on the length of the women's lines. By classification, they are broken down into approximately what they call women's high-heeled and medium-heeled structures, service type shoes, casual shoes and the flat shoes in their particular category.

Counsel for the Commission said he was trying to understand whether the styling of shoes, in the women's line particularly, is important in having a salable line of shoes. By styling he means open toes, lace, frills or bells. The witness said it depends entirely on the market that a line



of shoes is trying to reach. If it were a very high fashion, high priced line of women's shoes, he is sure you would find many more frills that you would find in a line like Naturalizer. Naturalizer's line is known in the trade as the middle of the road, medium priced line of women's dress shoes, casuals and service shoes, and when he says service shoes he is referring to shoes like Clinic nurses, waitresses and beauticians. Air Step is basically no different from Naturalizer. There is a little change in the pattern, a little difference in the ornament on one shoe than on the other. Basically, they appeal to the same customer, not only age but in the price category as well. They both retail for about the same.

Two lines conflicting in price do not necessarily mean they conflict in style. One might be a high style shoe. It would depend on the length and breadth of the line. There are price lines in the same category with Naturalizer and Air Step that are typical fashion lines of shoes. And there are other lines that are, that do not have the length and breadth that the Naturalizer might have. Not too much depends on whether it is in the same price category, but it depends pretty much on the type of market you are gearing your line and your various classifications to.

The witness was asked what determines which shoe store gets the business of a girl who has \$15.00 and is going down to buy her Easter shoes, and two stores right alongside one another are the stores she visits. He feels [fol. 212] that the place that person goes to buy shoes pretty much depends on the kind of impression that retailer has made on her prior to that occasion and how he functions as a retailer, because where a person buys, has a lot to do with how they may have been treated in that store prior to that time.

Women are quite interested in the style of shoes they are going to buy. You change your styles periodically in women's shoes. How often, depends on how long a style might continue to be accepted at the retail level, the consumer level. How long it will sell. You have new styles being introduced periodically. That is done on a broad scale twice a year and on a less elaborate scale two additional times a year. So, you might say, you have new shoes introduced

and presented to the industry four times a year. The woman buyer is likely to try 3 or 4 stores looking for a style that will please her.

It is not reasonable to suppose that the more style you have the more likely you are to get that purchase. The witness said, more sales in a retail store are lost because the retailer does not have the size to fit the customer in the style she might be interested in, than because of the pattern selection. They might have 18 different patterns, but lo and behold they don't have her size in the pattern that she eventually decides that she likes. So the theory is, and it is a good theory based upon performance, they buy fewer patterns, more sizes. In that way you have a good representation of the styles. That is a good retailer theory. Any good retailer will buy that, and does buy that. So you have sizes and fewer patterns. More sales are lost because of the lack of size than the lack of pattern selection. Pattern or style is considered the same. I use them both in the same manner.

The witness testified that another reason why concentration is advisable is because the dealer has fewer salesmen calling on him. He would have fewer salesmen calling on him if he had fewer lines, simply because if he was dedicated to carrying fewer lines, most salesmen after the second, third, fourth or fifth try would say, "I have tried to sell this gentleman on previous occasions and [fol. 213] I haven't been successful. There is no use calling on him any more." And the law of average would work on the retailer's behalf, because of the number of salesmen on the road. As to whether Brown allows their salesmen to pass up prospects with that kind of thinking, he said their salesmen are absolutely responsible for distribution in that particular territory. It is not a question of letting them or not letting them. The witness is not in charge of salesmen as such, but his answer was predicated on the fact that he has a reasonable knowledge of what some of the functions of the sales divisions are. If they have a blank spot in distribution they urge salesmen to fill it. If it is a town that he is going to any way he might as well stop.

The witness testified that it would not be good retailing to select a hot item from several different lines. Spot items. The net result would be that the retailer would

lose sales because of inventory problems he would have, the merchandising problem, the advertising problem, and that all eventually has to catch up with you and the net result is less sales on a profitable basis.

Taking a woman's spectator pump as an example, the witness was asked why it wouldn't be good retailing not to buy that pump from another manufacturer, just that pump in a full range of sizes, just as if they were buying it from Brown. The witness said, well, simply because it makes a more complicated selling job for the retailer, number one. If that customer had come into his store on previous occasions and had bought another pump in a similar category, basically the type of shoe she would normally wear, and then she would come in and would want to buy a spectator in that category and the retailer offers her another brand, she might be skeptical because she liked the last she was wearing, or the pattern in the other brand. Naturally, the retailer hopes she was very well satisfied and the retailer sometimes has a problem in reselling that customer on some other brand, or some other last within the brand, and it creates some skepticism in the mind of your consumer, which is very poor, poor retailing. All the different manufacturers use different lasts and not only does [fol. 214] it raise skepticism in the minds of the consumer because the retailer is trying to sell her another brand, but she apparently was satisfied with the other brand on her last visit and from the standpoint of brands and the standpoint of lasts, it might not fit her too well. You don't know until you have tried.

They think shoe customers are brand conscious. That is part of the reason behind the advertising campaign to make them brand conscious. Counsel for the Commission said presumably if the customer is brand conscious and you don't have the brand she wants, she is not going to buy. The witness said that is correct, unless she sees, she might see a brand advertised and in the community where she lives there might not be a store convenient where she can buy that brand, so as a result of that she might go into a store that doesn't carry that brand but she might find another brand in trying on the shoes and wearing them that might satisfy her, just as well as the advertised brand. Ladies, while they are brand conscious, and I think

this is true in the shoe business as well as in the ready-to-wear business, millinery business. I think women buy on impulse. They see something they like, and if it fits well and looks attractive on them, they buy it. There is not too much real brand shopping.

There is no truth to the legend that fit is not important to a woman. Women today are much more conscious of fit than they were years ago. Years ago women were pretty much size conscious, they wanted to have a 5B or the smallest size they could get on their foot, so that they could know that you were putting on only the size that they asked for and it seemed that years ago women took pride in how small their shoe size was. Today they are much more fit conscious, and they want comfort, and they are not nearly as size conscious as they were years ago. They not only care if they are small, they pretty much want something that looks well and that fits them.

Counsel for the Commission referred to previous testimony by the witness concerning the inability of a dealer to successfully handle several conflicting lines because [fol. 215] they don't keep up with the market in the industry. As to whether these retailers are the most qualified persons to deal with their own customers, or whether there is any one more qualified to determine the demands of their own clientele, the witness said, no, they are the most qualified. He wouldn't say always the most highly qualified, but they should be in the best position to know what would sell in their own store. They don't travel to see what other sections of the country might be doing in the way of introducing new items of promotion. So as a result of that they live and work in a rather confined area, and they are not exposed to possibly as many other techniques and methods that some of the larger department store operators or chain store operators are exposed to in the metropolitan cities. There are many dealers in smaller communities—5,000-30,000 population—who don't have the personnel that enables them to get away as often as some people from either large volume brackets or metropolitan cities where the market is more convenient to them.

The Hearing Examiner said he had trouble understanding how getting away does any good. The witness said

there are two facets of it. He certainly agrees a man is best qualified to know what is selling in his store, simply by knowing the people in the community and knowing what sales he is making, and what sales he might be losing, and studying records on his inventory. But the thing he is referring to is the new business that the man might be able to do by bringing in additional merchandise into his store, by seeing other areas of the country. The lines of the different manufacturers are not brought to a dealer in all cases. For example, this weekend the Dallas shoe show will start. This is a regional show, and some dealers come into Dallas to buy their requirements, that is the smaller percentage, and other dealers will buy merchandise in the store as the salesman calls on them. But many of the salesmen who work the regional shoe shows don't make the small towns, and the very small communities because of the size of their territory. So if a dealer wants to expose himself to certain lines it is either a question of him going to the shoe show or he does not see the line.

[fol. 216] The witness was asked, why not advance shoes to the retailer in order to give the public a choice of 2 or 3 brands. He said the retailer can do so if that is his choice. There is nothing that says he cannot do that. If it is profitable for him he will continue to do it, but if it is not profitable for him the witness doesn't think he will do it. That is, not if he wants to remain competitive and still operate a profitable business.

The witness testified about 80 percent of the Brown franchise dealers carry other lines. He did not give an estimate as to how many carried conflicting lines. His estimate on that would not be as accurate because it is a little easier to offer a total than to break it down as to a high price conflicting line or a low price conflicting line. He would say possibly 50 percent of the stores carry a line that directly conflicts with Brown. As to whether that would be an entire line of shoes, the witness said, no, when you consider that, it might be an entire line of what that line represents, but not an entire line as long as another entire line. In other words one line might be shorter than the other.

He does not know how many franchise dealers carry a

line that completely conflicts, that did not carry Naturalizer or Air Step but that carried in lieu thereof a complete line of women's shoes. He said, you might use the line of Clinics. That is a short line of women's basic service type of shoe. Now we have those same numbers of patterns approximately, maybe with the exception of one or two that are included in the Naturalizer line. While the Clinic line is very short, he would estimate that Clinic shoes are sold in several hundred Brown franchise stores. They are service type of shoe, for beauticians, waitresses, and nurses. It would conflict with segments of the line, more than two or three, because the Clinic line is broader than two or three patterns, and the pattern offered to the retailer in that same category from Naturalizer are more than two or three. The witness thinks it amounts to about 6 or 7.

A high priced line of shoes, a line of men's or women's shoes priced anywhere from \$5 to \$10 to \$15 higher than Brown's lines, would not be considered a conflicting [fols. 217-219] line. The same is true at the other end of the scale, the lower priced line. A line of work shoes would not be a conflicting line. Brown is essentially not in the work shoe business, and rubber shoes such as canvas shoes, the work and play type, would not be considered conflicting. The witness knows of many franchise stores that do not carry work shoes from anybody, including Brown Shoe Company. There are such a few patterns that Brown has to offer. He would say very few franchise stores don't carry sneakers, but there are many that do not carry work shoes from anybody. By and large the great percentage do, but there are a few that would not carry the canvas or the sneaker, open top, or casual type. These outside lines would not be considered conflicting lines, by the nature of their construction, because Brown does not have that type of product to offer the customer.

There is no different commission paid to Brown salesmen on sales to franchise stores than to other stores.

The witness stated on direct examination that they preferred franchise stores to carry insurance. It is not required that they use the Brown insurance plan. In fact, he thinks the record will indicate that many of the franchise stores elected not to carry their insurance.

. . . . .



[fol. 220]

May 4, 1960

HAROLD J. LAVERENZ, called as a witness for the Commission, testified as follows:

Direct examination

The witness was subpoenaed to appear here today. He is Sales Supervisor of the Huth-James Shoe Company, and has been in that position about ten years. The office of the Company is at 1039 South Second Street, Milwaukee. The factory is in Waupun, Wisconsin.

The duties of the witness are to hire the salesmen, supervise their activities, call on make-up accounts, and occasionally travel with the salesmen who call upon the independent retailers. He was employed by the Company prior to becoming Sales Supervisor. For a period of two years, 1948 and 1949, he traveled exclusively as a salesman in the Wisconsin territory.

The Company has a number of salesmen ranging from twelve to fifteen, and they cover the northern one-third of the country. They do not get into the New England states.

The witness was with the original Huth-James Shoe Manufacturing Company from 1932 through 1944. He was sales correspondent, and called on make-up accounts. The original Huth-James Shoe Manufacturing Company liquidated in 1944. The present Company, called Huth-James, Incorporated, while it does have some officers and stockholders in common, is a different entity. The present Company started in 1947. There was a three year gap of inactivity between the two companies. There is a difference in the name.

[fol. 221] The present officers of the Company are Mr. Edward C. Huth, President and Treasurer, Mr. Walter Sawyer, Vice-President, and the witness is Secretary.

The Company has one manufacturing plant, but it covers two buildings. Part of the process is started in one building, and then the shoes are completed in another. Each building is not a separate plant. His Company sells the upper one-third of the country. The witness named the following states in which its shoes are distributed: Washington, Oregon, Idaho, Montana, California, Minnesota, Wis-

consin, Iowa, Illinois, Michigan, Ohio, parts of Pennsylvania, and a part of New York state. Also included are North and South Dakota.

The Company manufactures presently boots, utility shoes, and dress and young men's shoes. By "boots", he means insulated boots, worn in the cold weather or hunting boots worn by hunters, either in late spring or early fall. The shoes are sold under the trade names Huth-James Float-Aways. The boots are Snow-Go. Another trade name is Sturdy-Style. Those are the major trade names.

How young an age group their shoes supply, depends, of course, on the size of the boy—but from about five, six or seven, upwards in age. The retail price range of the boys' shoes are from \$7.95 through \$8.95. The young men's shoes are from \$9.95 through \$11.95. Utility shoes—and these are in terms of today's prices—are \$11.95 through about \$14.95 and \$15.95, and boots are about \$17.95 through \$21.95. Utility shoes are those shoes worn by people in shops, filling stations, mail carriers on the street, filling station operators. They are a little bit more dressy than the average work shoe as known in the past days. Years ago people classified a work shoe as a shoe that was unlined. Today your utility shoe, as his Company makes it, and for the most part is lined. They are made quite well, they have a considerable amount of finesse. His Company makes so few work shoes that he could say in a general way it makes no unlined work shoe, except for one unlined hunting boot.

The witness is familiar with the price range and styles of shoes with which he competes. He is familiar with the [fol. 222] Brown line of men's and boy's shoes. As to whether his shoes are competitive or in the same price class with the Brown lines, he would say in a general way, yes. They do not have certain types which his Company makes. It is his impression that they do not have work or utility shoes to any great extent. But speaking of dress shoes, men's and boys', they compete. His shoes are priced to sell to about the same market as Brown shoes.

The witness would break their type of customers into two classes. Number one, make-ups which is becoming increasing in amount percentage wise. By make-ups he means large firms have his Company make up shoes for them to their order and specifications. The brand name

appearing on make-up shoes might be Montgomery Ward, Sears-Roebuck, or J. C. Penny. It is the brand of the buyer, and that is what is known in the industry as make-up. Then, sales to independent retailers. He sells directly to the retailer. His lines are presented to the retailers through salesmen on the territory. For the most part they work on a straight commission basis, and call only on retail customers. The retailer customer may be an individually owned store, a partnership, or a corporation. They are stores not owned by a manufacturer. The term family shoe store would not entirely describe the type of store. Some shoes are sold in men's clothing stores. A family shoe store, as generally known, covers everything from soup to nuts, from women's to children's to men's. As the name implies, it is a family shoe store.

His Company actually sells three types of retail customers: family stores, men's clothing stores, and department stores. As to their ranking in importance, he does not have any figures before him, and this is only a general impression, that while their sales to make-up accounts has increased, their sales to independent retailers has at the very best in most years just held its own or has gone down. The family shoe store, in the sales his Company makes to independent retailers, would perhaps represent 70, 75 percent. That is an estimate, an informed guess. His Company was selling about a thousand retailers in 1959.

[fol. 223] Their terms of sale to a retailer are 2 percent 20, net 30 days. As to whether they grant any more extended credit than that to the stores, the witness said yes, we ship on dating before the season. Furthermore, in the case of accounts west of the Rockies, the Company gives them additional terms. In that case it is 2 percent 45 days, net 60 days, as a regular thing. The reason for that is that there is quite a time lag in shipping from here to the west coast. So, conceivably the fellow on regular terms might be asked to discount or pay even before he had the merchandise, or shortly thereafter, if it were shipped on regular terms.

At this time Commission's Exhibit 139 was marked for identification. The witness was shown Commission's Exhibit 139 for identification and asked to identify it. This is a breakdown of his Company's sales in pairs and dollar

volume between make-up and sales to retailers for the years 1954, 1955, 1956, 1957, 1958 and 1959. These years were selected for no particular reason, but, of course, you cannot go much beyond 1959. Then, to go backwards would have meant some more delving into their records, and it took quite some time for this tabulation. The figures came from their ledgers and production records. Commission's Exhibit 139 was received in evidence.

Counsel for the Commission observed that Commission's Exhibit 139 showed that his Company's retail pairage had declined somewhat since 1954, being approximately 138,000 in 1954, 89,800 in 1958, and 111,000 in 1959, and asked the witness if he had made any attempt to determine the reasons for that. The witness answered we, of course, constantly write to the salesmen and ask them why they are not selling this account or that account, and as all manufacturers do, we encourage and urge the salesmen to increase their volume. If they are not selling an account we try to get the reason for it.

He means specific accounts. As to over-all volume the witness had two observations: One, that due to so-called larger manufacturers, this sales force cannot effectively [fol. 224] solicit those prospects. The other observation is that it appears an increasing pairage is sold in so-called shopping centers, traditional retail shopping centers are losing their importance. His company sells shoes in shopping centers in a few cases. However, in many shopping centers there are the leading stores which are chains. By chains, he does not mean retail shoe chains as such, but manufacturer-owned in many cases.

As to why the witness considers the shopping center movement a factor in his diminishing sales, he said that in many cases the independent retailer is not able from a financial standpoint to go into a shopping center. It requires a substantial outlay, very often quite high rent. Right here in Milwaukee the so-called traditional shopping areas are dying off and it would appear that a greater and greater percentage of your shoe volume is being done in shopping centers, where in most cases it is my observation, the outlet is not independently owned. It is controlled by a shoe manufacturer in many cases.

As to what he meant by the term "plans", the witness

said I don't know whether such plans are supported by an agreement or not. But from experience in traveling, myself, as a salesman and in working with our salesmen in the territory, when we go into a store and we see that the retailer has on his shelves almost 100 percent a line of one manufacturer, the next question usually is: "Are you on a plan or are you on a franchise?" The answer in many cases is yes. Then you might just as well move on, because from an effective standpoint your chances of selling such people are nil. Our salesmen are on a commission basis and they would rather move on to another account. Now, in many cases such outlets who are on a plan are the better accounts, in a city or a shopping area. They are more desirable. Therefore, we frequently have to settle for the less desirable outlet, less desirable from the standpoint of volume, and also perhaps less desirable from a credit standpoint.

As to whether the witness is familiar with the Brown Franchise Plan, he said if you are talking in terms of an [fol. 225] agreement, I am not familiar with it. If you are talking in terms of where a retailer is concentrating on their product, yes. There are Brown Franchise Stores within the territory he sells. He could cite one case to illustrate the point. He is not selling substantial amounts of shoes to any of the Brown Franchise Stores in his territory.

As to whether he had ever attempted to discover why he is not selling Brown Franchise Stores, the witness said from my own personal experience, when you contact the salesman and you say, "Why aren't you selling this account or that account" they say, "It is on a plan of some kind, of this kind, or that kind." I am referring back to this manufacturer's or that manufacturer's plan, and from that standpoint the plan saves him some time, he does not continue to call. When a salesman walks into a store that is on a plan, he is discouraged in that he is not encouraged by it, and if he continues to call and does not get a hearing, and is not allowed to bring in his line, he finally gives up calling on the account. Very frequently, he will ask the man, "Is there any use in my calling any more?" And the fellow is frank and says no, he is not interested, because he is on a plan.

The witness learned this by direct questions to his salesmen or accounts that he has called on. He has had that kind of experience in relation to Brown accounts. The witness has asked his salesmen specifically concerning the Brown Plan Stores.

Q. And what was their response?

Mr. Burke: Object to this line of questioning. I object to what some salesman said. It is hearsay and we are not bound by it. We are not bound by a salesman who is not on the stand.

I object to the question.

Hearing Examiner Creel: Overruled. You may answer.

A. They told me they did go to Brown Plan Stores and that there was no object in their calling any more, they just could not sell them.

[fol. 226] The witness has personally called on Brown Franchise Stores. He would like to cite one. Lindman Shoe Store here in Milwaukee. He said when I first started out on the road in 1948, and throughout the years between then and 1955, I continued to call on Mr. Lindman. Finally after getting no encouragement from him, I asked him, "Now, is it worth while for me to call any more? I don't seem to get any encouragement." He said something to this effect—I don't remember his exact words—"No, I guess it is not worth your while to call on me." He said he was on a plan, what the plan was, I don't know; but he was on it. You sort of run into a barrier there, when they say they are on a plan, you just run into a wall.

That is about as much as he knows about it. They did not tell him anything further. He has not seen a plan. That is just a term they use. He believes he would perhaps remember some Brown Franchise Stores if he were shown a list of them. He doesn't have the benefit of his ledgers here. Perhaps he would be able to identify some.

The witness was shown Commission's Exhibits 23 and 24, a list of Brown Franchise Stores listed alphabetically by state and asked whether he discovered any of his customers on that list. He did remember some accounts here. He has already referred to Lindman's Shoe Store. They were not able to sell them. Perhaps he called on them the



last time in the early '50s. Since then their salesman in the area has continued to call on them with no results. It is a family shoe store, quite a good size, in a good shopping area.

Hearing Examiner Creel: It is not clear to me whether you are naming the ones your company has called on or to which you actually make sales.

Mr. Rogel: I asked him whether they were customers.

Hearing Examiner Creel: Yes, I understand. But he is discussing Lindman; he called on them and didn't sell them. Just so it is clear.

The Witness: All right. I would say that Meyers Shoe Store, Watertown, Wisconsin, comes to mind. We sold [fol. 227] them at one time and then there was a lapse of some years. I am going by memory now. And recently we have started to sell them again. I don't know if they were a Brown Franchise store then, and later perhaps went off; but at least there was a period of quite a while when we did not sell them.

By Mr. Rogel:

Q. Did you sell them last year?

A. A little. Some in utility shoes, no dress.

Mr. Burke: What is the name of that?

The Witness: Meyers Shoe Store, Watertown, Wisconsin. There is Sault Sainte Marie, as I go through here. No—pardon me, I don't find that one in here.

I do know that in the case of this account at Sault Sainte Marie, we had been selling them; then for a period of time they didn't buy from us. I was told it was because of the plan. Now more recently they have started to buy again, and I am informed that it is because they have gone off the Plan.

Mr. Burke: I move to strike this testimony as founded completely on hearsay. There is no opportunity for respondent to cross-examine or be confronted with the witness.

Hearing Examiner Creel: I understand that. I am interested in knowing who informed you.

The Witness: Our salesman, Mr. Luther.

Hearing Examiner Creel: I don't know which account you are talking about.

The Witness: The account in Sault Sainte Marie, Michigan. It is—what is it—

Mr. Timony: Passmore.

Mr. Burke: Just a minute. Counsel for the Government should not be allowed to lead the witness, and put answers in his mouth. This is discovery information, and he is supplying the witness with answers.

Hearing Examiner Creel: Well, I don't think it should be done quite this way. I think it is technically proper that he ask him.

[fol. 228] Do you find this account on the list of Franchise holders in front of you?

The Witness: No, I don't find it here.

Mr. Rogel: I don't think it is here.

Hearing Examiner Creel: Did you look over the entire list for the States in which you sell?

The Witness: I did; well, I paged through them.

Hearing Examiner Creel: Those in the States where you sell; did you do that? As I understand, that was the question.

Mr. Burke: As I understand it, there are only two names so far.

Mr. Rogel: Meyers and Lindman that were on this list.

By Mr. Rogel:

Q. The question was to look through the list and see if you found any store to which you were selling. Cassidy Shoe Store, in California. Again, that name strikes a familiar note. The witness is sure they shipped some to that store. It is in Hanford, California. He would say that they shipped them prior to about 1955.

Master Shoe Company of Waukegan, Illinois, is one of their customers. They are selling them only the utility shoes. At one time his company shipped them boys' and young men's, but ceased selling them boys' and young men's shoes four or five years ago.

The witness is not making any substantial sales now to any of the accounts on the list he just examined. He does not recall the names of any shoe stores which may not be on that list, similar to the Passmore store which he formerly sold to, but which stopped buying from him and

which he learned was due to them going on the Brown Franchise Plan.

He cannot think of the names of any accounts of Brown Franchise Stores on the list that either he personally or [fol. 229] his salesmen have called on in the last four or five years and attempted to sell. He does not remember personally calling on any other Brown franchise stores when he was a salesman. He personally called on Meyers Shoe Store in Watertown, but he believes they were not then on the franchise.

There is a White Shoe Store in Green Bay, Wisconsin. He called on them in 1948, 1949, and 1950, or thereabouts, and was not successful in selling them. There was no encouragement given whatsoever. After that he succeeded in opening another account in that area, in Green Bay. Then he didn't call on them any more. As he recalls, White's handled Brown shoes. He couldn't be positive about that, but he knows a concentration plan was in effect there. He doesn't know whether it was Brown or not. He wants to be fair.

The witness was asked in what size towns, or what would be the population limits of the towns in which his average family shoe store is located. The witness said when you say the average, I would say beginning with 1500 people, upwards. It is quite difficult to say. You may have a good family shoe store in a town of 500 people, if it was the County Seat and the shopping area of the community. As to towns ranging from five to thirty thousand population, in a town of 35,000 you might have 20 to 25 outlets that would be available, including department stores, clothing stores and family shoe stores. It would be a catch all. When you would get down to around 5,000, he would say perhaps two, three, four, five. You can't limit the opportunities of a city by the immediate population. You have to consider also whether it is a shopping area. In the town where there are 4 or 5, or a town where there are as many as 20 or 25, all of these would not be good prospects for his line, because some necessarily would be higher priced and some lower priced than his.

It is difficult to answer how many would be available or desirable to him as customers. It depends again upon the city, and some cities just have low priced merchandise

entirely, depending upon the per capita income in the city. But he would say an average city of 5,000, there might [fol. 230] be three to five outlets, and he would say 2, perhaps 3, maybe 4 would be. In towns where there are four or five outlets and two or three might be good prospects, as to whether any of them are ever on the franchise programs he mentioned, the witness said I can't recall offhand any Brown Franchise account in the town of 5,000. It could be considered, I want to be absolutely fair and honest about this. I can't offhand name any, based on my own experience in calling on the trade, and traveling with the men.

#### Cross-examination.

The witness has about 12 to 15 salesmen on the average, and they work directly under him. Sales matters are not the only phase of his work with the Huth-James Company. He handles advertising and credit. In a company of their size, a man's duties are manifold. The witness handles those three general areas as his over-all duties.

The Company with which he is associated began in business in 1947. It didn't start selling shoes to the public until 1949. That is when he went on the road to introduce the line. He was the first salesman they had. In the intervening years his Company's sales of shoes have built up to a gross of some one million, eight hundred thousand dollars, according to Commission's Exhibit 139.

Looking at Commission's Exhibit 139, there are the two classifications of wholesale and retail. These are the only two classifications in which his Company markets its products. Retail would include any sales to jobbers. Sales to jobbers would be very, very minor, some years not at all. His Company, for instance, might sell close-outs to jobbers. They sell factory damaged shoes month after month to jobbers, but it is not segregated. It is infinitesimal. The wholesale is entirely make-up. His make-up business has been on the increase. In the last several years on both a pairage and a dollar basis it is better than 50 percent of his total business. That includes boots and utility shoes and all types and size ranges of shoes they manufacture. [fol. 231] Regarding the three general classifications of shoes named by the witness: boots, utility, dress and young

men's, and what part of the total pairage the boot business represents, the witness would say this. If it were not for the boot business which we went into about five years ago and on which we have pioneered in certain directions, in certain types, our sales to the independent retailers would be considerably less. To be specific, it has gone from nothing to perhaps 15 percent of their pairage. That would apply more to retail than to make up.

The utility type shoes would be perhaps 50 percent of the total pairage. The spread of utility shoes sales between wholesale and retail is the same as the proportion of sales that are wholesale to retail. Boots and utility shoes would account for 65 percent of his total pairage. The rest of the pairage is distributed on what he calls dress and young men's. That would be 35 percent of the total pairage. More dress and young men's shoes are sold proportionately to their independent accounts than to their wholesale accounts.

The general types of their make-up shoes, other than utility which is about 50 percent of the wholesale shoes, are distributed among the three other classes: dress, young men's and boots. Boots are on retail for the most part, but they do sell boots to wholesale accounts. And they sell the other classifications of shoes to their make-up accounts too. It varies between the years. It might be more one year on the make-up side than on the retail side, but the general trend in their business of sales to the independent retailer is downward, and percentage-wise, the disparity is even greater. And their sales on the make-up basis are increasing. Over-all, their business in the last five years has increased, on a growth basis.

As to whether young men's shoes are dress shoes, the witness said young men consider them so. He classifies them separately. He refers to dress shoes as staple shoes, custom, a more conservative shoe. A young man's shoe might have a lot of gingerbread, buckles, ornamentation.

His Company did not have a national advertising program for its shoes. They have it in certain types, such [fol. 232] as some of their boots. They have been talking about it in the dress or young men's shoes, but they don't have a national advertising program. The witness would say from his experience in the marketing of shoes, that

brand name identity of a shoe is of significant importance to a shoe retailer. Brand name identity on shoes has the effect of preselling that shoe to the public, and from that standpoint it would be desirable. That is one of the factors that a retailer of shoes must take into consideration in the types of shoes he buys.

The witness would agree with the general proposition that the manufacture and merchandising of shoes is quite a competitive business these days. There are many in the shoe business all trying to reach practically the same market. When his salesmen call on a customer in the course of their work, they do not always sell that customer their line of shoes. If the salesman considers him a prospect after the first few calls, he continues to call on him. It is possible that he may call on him and never sell him shoes.

His Company has 800 to 1000 retail accounts throughout the territory in which they market their shoes. He has made no determination as to how many shoe outlets there may be in the territory in which they market their shoes. The number of retail outlets his company sells may be 1200, but it is not 2000. There are less retail accounts today than they had at one time. They get new accounts from time to time, and they lose accounts from time to time. That is a normal turn over that goes on in the shoe business. The accounts that they may lose, it is due to the fact that some manufacturer of shoes has gone into that particular retailer's store. Sometimes when they get a new account, their shoes replace another manufacturer's shoes. Of course, new accounts are opened in various ways. People do open a store, and a new account isn't always taking an account away from someone.

The witness is acquainted with a store in Chisholm, Minnesota by the name of Randy's. It was quite a good customer of theirs in the early '50's, or thereabouts. He believes their line of shoes was replaced in that store by Brown. He didn't call personally. His salesman at the [fol. 233] time was William Kaylor, and he told the witness that there was a plan in effect, and he thinks Kaylor said the Brown plan. He is sure the salesman told him there was such a Brown Plan in effect at that time. The witness believes that was his reason for having failed to keep their line of shoes in the store. The witness inquires



of his salesmen why they lose the accounts, and they try to furnish the reasons. They try to find another account in the area. The Lindman store in Milwaukee was not a customer of their company. He was a prospect. He believes they did sell some boots to Lindman in 1958 and 1959. He is going by memory. The witness would not be able to affirm or deny whether the Lindman store has Lazy-Bones and Clinic shoes. He has not been in that store for many years.

As to the number of shoe stores in Milwaukee in the same classification and the same type of shoes that his Company makes, the witness would say there are several hundred. He would not be in a position to say. He would say they have about 20 to 25 outlets in Milwaukee, which is down from 30-40, in metropolitan Milwaukee. He would say several hundred stores. He wouldn't be in a position to say the number. There are several hundred in their price classification.

When the witness markets his shoes, he does not try to put his shoes in every store in a town of 35,000 population. In that size town they might try to get their shoes in perhaps two stores, and naturally, they try to sell the best or the better ones. In relation to a town of 35,000 population he said they would have perhaps 20 to 25 outlets, not necessarily in his price grade. He would then try to put his shoes in 2 outlets, but remember when you bring it down to his types of shoes and price, that would not be 25.

In regard to the shopping center trend that has been going on and the effect that it has had on the retailing of shoes, what the witness calls the traditional type of shoe stores means being on the main street in the commercial shopping area of the city or town. Wisconsin Avenue here in Milwaukee is an example. That is what he would call a traditional type of shopping area. The witness [fol. 234] knows a shoe store called Charles Strauss Shoe Store on that street. He does not sell any of his shoes to that store. He doesn't know whether it is on a plan. The witness has found the trend he mentioned in shopping areas to be a factor throughout his sales territory as far as affecting the retailing of shoes.

The customers to whom the witness sells his make-up

shoes have outlets in shopping centers. So that his make-up operation is supplying shoes in this growing area of shopping center merchandising. He wants to make one distinction. The people he is selling to there are independents, they are chain stores, chain retail stores in and by themselves. J. C. Penney Company is. To his knowledge they have no manufacturing facilities. To his knowledge Montgomery Ward has no manufacturing facilities. But those are the kind he is selling his make-up shoes, and they were, or are marketing those in shopping centers.

Some years back his Company sold some shoes to a shoe store by the name of Colbert in Chippewa Falls or Marshfield. They haven't recently. As to whether the reason for their not being able to sell them any shoes is because the Colbert store is on a plan, the witness is not in a position to answer that affirmatively or negatively, because he doesn't recall.

The capacity of his Company's plant for production of shoes per day is 1200 to 1500 pairs. They work one shift. They do not stock make-up shoes. They manufacture those pursuant to order. The shoes that they market under their own name are all in stock. The salesmen sell them in advance, but those shoes are consolidated and come through stock records. And then they manufacture based on orders that come in.

His Company furnishes display material or signs to retailers that they have as customers for their brand lines. Window cards and mats.

. . . . .

[fol. 235] It may be that in the last few years there has been a downward trend generally in men's shoes, as far as their production and sales in the country as a whole are concerned. However, his Company's total pairage over-all hasn't necessarily gone down. There has been some falling off on a per capita basis of the production of men's shoes in the United States. That is a trend in the industry. An industry trend of that nature has an effect on his business too.

There is a boot that is manufactured by the Acme Boot Company. That is a competitor. The boots of Acme do not replace the boots manufactured by his Company if they can help it. They consider themselves very competitive

[fol. 236] where Acme is concerned. And sometimes it could be the Acme Boot replaces their boot in a retail store. The witness said we strive against it, and if you are talking about boy's boots, we don't have them, but they have gotten into other boots like we manufacture and we consider ourselves competitive. The witness recalls they made a sale of boots to Lindman's store in 1957 or 1958, thereabouts. It is only a recollection through, and he believes it was boots. It could be that the Acme boot replaced their boot in the Lindman's store.

The witness mentioned Montgomery Ward, J. C. Penney and Sears Roebuck has a type of account included among their make-up customers. It does not necessarily include them specifically. It does not include Sears Roebuck. It does not even include Montgomery Ward. It does include J. C. Penney. Those are the type of accounts going into shopping centers throughout the country. You find those in the new developments.

The witness would not be in a position to say whether his salesmen have tried to sell their brand of shoes to the Colbert store in Marshfield or Chippewa Falls in the last five years, because he does not have the benefit of his salesmen's daily reports or letters. His Company's line of shoes in the young men's and boys' categories competes with a number of other nationally advertised brands besides the Brown Shoe Company.

#### Redirect examination.

The witness believes that the per capita consumption of men's shoes has been down slightly in the last ten years. He said that he was going by memory, according to the National Shoe Manufacturers figures. He doesn't believe total production pairage would be down. He doesn't know of his own knowledge.

Included in the term utility shoes, as used by the witness, are shoes that people would wear for work, you might call it semi-dress, where they would perhaps wear a uniform, or where appearance might be a factor. The type of shoes they manufacture you wouldn't necessarily wear on the farm riding a tractor, or digging a ditch. Their utility [fol. 237] shoes are dressy and are lined. At this time Commission's Exhibit 140 was marked for identification,

offered and then withdrawn. The dress and utility classifications overlap somewhat but not very greatly. Sixty-five percent of their volume is in utility shoes.

\*     \*     \*     \*     \*     \*     \*

As to the hypothetical town of 35,000 population, which the witness stated would have 25 or 30 shoe outlets, not all of the outlets would be in his Company's price classification. When you eliminate the exclusive ladies' stores and ladies' departments in department stores, perhaps juvenile stores, conceivably high-priced men's shoe stores, it might get down to five to seven shoe outlets would be in their grades.

Q. Does it occur in towns of this size that one or more of the available outlets is on a so-called plan?

A. Yes.

Q. What effect, if any, does that have on your prospects for gaining an outlet in that town?

Mr. Burke: It seems to me that is somewhat speculative. We don't know where we are. It is hypothecating an imaginary situation, as far as this line of questioning is going. It is also repetitious. It doesn't show that it happens, or where.

Hearing Examiner Creel: I will overrule the objection, and see how far it will go.

The witness said if there is a retailer or two or three on some sort of Plan, that naturally diminishes the number of prospects in such a city, and they very often are the most desirable from a volume as well as a credit standpoint. From his experience, the Plan merchants—partic- [fol. 238] ularly the Brown Plan merchants—are the more desirable type of store in their particular locality.

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WILLIAM EDWARD FREEMAN, called as a witness for the Commission, testified as follows:

Direct examination.

The witness was subpoenaed to appear here today. He is the President and Treasurer of Freeman Shoe Corporation, Beloit, Wisconsin. He has held those positions for five

years. Prior to that time he was a salesman for the Company, and most recently before becoming President he was in the merchandising department of the Company. He was in sales from 1948 to 1951. The territory he covered was the State of Indiana, plus the southern corner of Ohio, Dayton down through Cincinnati. His duties in his merchandising capacity were the coordination, or trying to harmonize, the pairage on hand in the warehouse and anticipated orders on the Freeman production line. The title of the position was Merchandise Director.

The duties of the witness at the present time as President and Treasurer of the Freeman Shoe Corporation are coordinating to the best of his ability the various departments of their company, namely production, sales and accounting; and also, to develop the necessary management people to head up those departments; to be primarily responsible for the cash flow in the business; responsible for reporting to the Board of Directors on the operation of the Company.

As to what contacts and duties the witness has with respect to his sales department, he said we have a vice-president in charge of sales who is directly responsible to me. He has under him thirty-two salesmen selling the Freeman product line to independent retailers throughout the country. My association is first of all as a business associate of Mr. Tobey, who is the Vice President in charge of sales, in discussion of policy, results of operations, and [fol. 239] so forth; but furthermore, I consider it one of my responsibilities to appear at the various sales meetings held under the direction of the Vice President in charge of sales, to meet with the salesmen in the territory from time to time, and also participate in certain national and regional shoe shows.

He feels that he has kept abreast of the selling problems of his company on the selling situation in the market in which their shoes are offered. He has had experience or contacts in the shoe industry outside of his Company. For a period of two years ending October, 1959, he was a Director of the National Shoe Manufacturers Association. He is a Trustee of the National Shoe Institute, which is a combination of the national shoe manufacturers and the national shoe retailers, and the two other trade associa-

tions that are jointly trying to promote the sale of shoes through advertising and strong promotion. He is a member of the Men's Style Committee of the National Shoe Retailers Association, which meets twice a year to discuss trends and so forth.

Freeman manufacturers men's fine dress shoes in addition to a fine line of men's dress casual shoes. The line consists of approximately three hundred styles in a price range at retail from \$11.95 to \$25.95. The witness is familiar with shoes offered in the United States which are competitive with the Freeman line of shoes. As to shoes offered and sold by the Brown Shoe Company which are competitive with his brand, the Roblee line of men's dress shoe is competitive to a very high degree, and in the lower price lines of Freeman it competes with the Pedwin division of Brown.

His Company has sales coverage throughout the entire United States. They sell principally to independent retailers, whether family shoe store types, men's shoe stores, men's clothing stores, or department stores. They also operate some of their own leased departments in men's clothing stores throughout the country. There are approximately 160 of these staffed with Freeman's own personnel.

As to how many retail shoe customers his Company has, referring to independent merchants other than factory [fol. 240] controlled, the witness said when you consider an account, I would have to take into consideration what we would consider the minimum amount of pairage to be considered an account. From that angle, minimum pairage being 100 pairs a year, I would say roughly 3300. Customers under 100 pairs could be prospects, or mail order accounts, but his Company doesn't like to classify them as an account because they are not that active, because the type of lines in the store or the smallness of the operation.

Last year about 83 percent of the total sales of his Company, by pairs, were with the independent retailer. The total sales volume of his Company last year, 1959, was \$20 million. Last year they shipped just slightly under two million pairs of shoes. This is about the same pairage sold or shipped ten years ago. Dollar sales are up



because of the inflationary trend in the industry. But comparing the two periods, the pairage would be about constant.

The terms of sale extended by Freeman to retail customers are 2 percent 20, net 45. That is uniform throughout the country.

The witness is familiar with the term Brown Franchise Store. To him the term means an association between the Brown Shoe Company and an independent retailer, whereby Brown provides to that independent retailer aids in merchandising, promotion, record keeping, window displays, legal and insurance aids, in return for the retailer purchasing from Brown a substantial portion of his shoe needs. The witness acquired this knowledge principally from three sources: One, the first occasion he had, was when he traveled in the State of Indiana, in talking with shoe men and dealers, and acquiring information along those lines. As to whether the witness remembered any specific dealers he may have talked to, he would have to rely on his memory, because this goes back to 1948.

Mr. Burke: This answer, in response to the question is apparently calling for hearsay testimony, and is entirely improper. I object.

[fol. 241] Hearing Examiner Creel: Well, I don't think so. Of course, I would not rely on Mr. Freeman's understanding of the plan as a basis for finding as to what the plan is. But his understanding of it may be important, and for that reason I overrule your objection.

The witness first became a salesman in 1948, and at that time he was carrying the fall product line of Freeman. After being in the territory a few weeks, he happened to get down around Columbus, Indiana, and noticed according to the record he had with him, that his Company had been previously selling the Cook Shoe Store. He made arrangements to visit with Mr. Cook and show him the Freeman fall products line. During their meeting, Mr. Cook said to him, "Bill, as much as I like the Freeman product line, my hands are tied, because I have just gone on the Brown Franchise Plan," which is what he called it. The witness noticed that Mr. Cook was remodeling his store and putting in new front windows that had the Brown image, as he had seen it advertised, with Buster Brown and other—

Mr. Burke: Just for the record, I want the answer stricken, as founded on hearsay.

Hearing Examiner Creel: The motion is denied.

This was his first personal encounter with the plan. He knew nothing of the plan even being in existence before that time. There was another Brown Franchise dealer in that area that the witness contacted, the Lanham Shoe Store in Huntington, Indiana, and he became increasingly aware of the Brown Franchise Plan, or Brown-Bilt Plan being in operation. You could almost spot the stores as you came into a community. After being turned down by quite a few, after they told him they had no need of Freeman products, the witness became aware there was more meaning there than there was spoken of to him. As an individual salesman he was never successful in selling to what he recognized as a Brown store.

The witness corrected his previous testimony that his Company had started in business in 1929 and said that he meant 1921.

[fol. 242] He was asked whether he had examined his files of records or made any attempt to find out whether his Company is now selling Brown Franchise Stores since becoming President. He said about two years ago we did become quite concerned about what we thought to be a diminishing market through the activity of the Brown Shoe Company and their association with independent retailers, and we did go back in our Cardex file, which is our individual account record, and since that time we have developed information, indicating to us that because we felt an account had become associated with some company on a franchise plan, we had lost that particular account as far as pairage in the Freeman Shoe Corporation. We have kept our records fairly accurate since that time.

The procedure followed to acquire this knowledge usually started with a letter from the salesman in that particular territory, advising our sales manager that in visiting with that account he was advised that the account would no longer be able to purchase the Freeman product because of his being made an agent with some other manufacturer regarding a franchise plan. The witness discovered several instances where a store which had been a customer of theirs became a Brown Franchise dealer and

then ceased being a substantial customer of theirs. The witness was asked for the names of any of the stores he may have and their locations.

During the period of 1948 to 1951 when he traveled the State of Indiana, he sold a fine family shoe store in Shelbyville, Indiana, at that time known as the Hub Shoe, to two brothers. At the time he left in 1952, his company was shipping approximately 800 pairs a year to that shoe store. He was eventually told that they went on the Brown Plan sometime in the last few years, and out of curiosity he checked the card file. He noticed that the pairage during the last few years had dropped to practically nothing, and they have no replacement in that community, Shelbyville, Indiana.

As to whether his Company ever sold to Jo-Mar Shoe Store, the witness said that he didn't know of it personally but he did get some information about it. His Company did sell that store. He was asked what his investigation disclosed as to that store.

[fol. 243] Mr. Burke: I object. It is based on mere conversation. By the witness' own testimony, he does not know about it personally.

Hearing Examiner Creel: Well, it all depends on how he has learned about it.

How did you learn about it?

The information the witness has came from the sales records which he went into during the last few days in the interest of learning more about the Jo-Mar Store. It meant nothing to him before. As to whether he sold that account, the witness examined some notes he had with him and stated that the account was in LaSalle, Illinois. In that particular city they were selling an account by the name of Good Shoe Store, who sold out to Jo-Mar Shoes in 1958. They continued to sell Jo-Mar until such time as they went on the Brown-Bilt Plan. At that time the orders stopped coming from that account. They did ship them through 1959, and nothing since then. They have not sold them since the early part of 1959.

They normally sold to a Wells Shoe Store in Ferguson, Missouri. The earliest sales figure he has on that store is 10,352 pairs in 1954. They sold 243 in 1955; 297 in 1956; 291 in 1957; 24 pairs in 1958; and 85 pair in 1959.

Freeman sold to a store known as Juels in Brookings, South Dakota, originally under the name of Stratton Shoe Store. Again, the records go back to 1955. The pairage from 1955 to the present was: 1955, 552 pairs; 1956, 86 pairs; 1957, 57 pairs; 1958, 11 pairs; now there is a little change. That store was bought out in 1958 by Juels, at which time they increased pairage to 143 pairs; but in 1959, it went down to five pairs.

Based on his experience both in his Company, and his contacts in the industry and with the Associations, the witness stated there are observable trends in the shoe market today, and they are becoming increasingly alarmed. Trends toward the disappearance of independent shoe retailer merchants. As to what has give rise to that situation, the actual disappearance—the witness thinks he should break it into two parts: the disappearance through giving up his store through sale, merging with various of [fol. 244] the larger companies, thereby completely eliminating that merchant from the market. It could be sales to other retail chains or shoe manufacturers, but the prime emphasis being on the manufacturers. Now, the other area in which, although he doesn't disappear from the speak, in that he has given up much of his freedom of operation in such areas as purchasing, selling methods, and so forth, through becoming associated with one or the other of the larger manufacturers through a franchise plan or other type of arrangement.

The witness had occasion within the last few days to examine the list of retail stores identified in the record as Commission's Exhibits 23 and 24, and represented to him as a list of Brown Franchise Stores. After examining that list he discovered some of his Company's substantial customers included in that list, that he was making substantial sales, too. Asked if he recalled the names of some of them, he replied, well, the first one he mentioned, the Hub Shoe Stone in Shelbyville, Indiana.

Hearing Examiner Creel: Are you referring to those you are now selling to, or those you sold in the past

By Mr. Rogel:

Q. I mean those that are currently substantial customers of yours.

A. I saw none.

The list of stores very definitely represented a market in which he could prospectively make sales. He is attempting to make sales in there, all the time. His Company considers that a prime market, towns of that size, and the types of stores. He does not feel that he has a good chance of selling to those accounts, those specific stores on the list, as he does to any other 700 stores. As to whether the market composed of that list is considered to be a free market to which he has access, the witness said well, we have access to it, but we don't participate in it, for some reason or other. I feel very strongly that it is not available to us.

The Company's corporate offices and two manufacturing facilities are in Beloit. Then they have two in Dixon, Illinois, which is south of Beloit.

[fol. 245] As to what services his company renders to their customers, comparable to the services rendered by the Brown Franchise program to its franchisees, the witness said one service we do render, which I don't believe I covered in my description of the Brown arrangement, we do have a store planning service available to our dealers, through our own store planning division. That is not given to them free of charge. There is a charge for the expenses incurred on the job by our men. The only thing we do in the accounting field is make available to them, on a form developed for us by Remington Rand, a form which is quite useful in keeping a perpetual inventory control. Those forms are for sale from us. We make a charge for that.

His Company does not offer any type of insurance plan or sponsor any insurance plan. They do not have any field representatives who are solely assigned, not just to sales, but who are assigned to assist their retailers. As to whether they are able to offer their dealers discounts on equipment they need other than shoes, such as X-ray machines or things of that nature, the witness said, no, we have no arrangements on X-ray machines. As to other types of footwear, such as canvas and rubber footwear, he said we have entered into arrangements with no other companies manufacturing products for use by the independent retailer.

As to point of sales aids or sales assistance generally, each Freeman account with a shipment of a season's shoes

will receive price tickets, two or three window cards of varying sizes, a standard Freeman window identity sign, so to speak, ad mats for local newspaper advertising—those are furnished without charge—and that is about the extent.

He supposes the reason why they have not been more competitive with Brown in offering additional services, such as the type Brown may offer, is their philosophy of operation. Dealers need help but they don't think it should be done. It would be costly.

As to whether it would be economically feasible to perform all those services, considering they have only their men's line of shoes in the store, the witness said, in the [fol. 246] dollar volume of men's shoes in our types of stores, say in a typical family shoe store, it is approximately 20 per cent of the store's volume. Being exclusively a men's dress shoe manufacturer, there would be many questions as to the logic of our following such a pattern of providing services for the entire operation.

The Company's net profit as a percentage of total sales after taxes in the year 1959 was 1.9 per cent.

#### Cross-examination.

Freeman does national advertising of their shoes. Compared to their competition it is not too extensive. At the present time they are advertising in Sports Illustrated, Holiday, Esquire, and Ebony. One of the purposes of a national advertising program such as they have is to establish recognition of the Freeman brand, and to help pre-sell. In other words, the theory of an advertising program of this nature is to pre-sell a brand by establishing identity in the minds of potential customers. The witness feels that a brand name, when it is a nationally advertised brand name, has a sales feature that a non-advertised brand would not have.

The shoe line his Company sells is a fine line of men's dress and casual shoes. It has a price range of \$11.95 to \$25.95. The Roblee brand of Brown Shoe Company, competes with those. Other competitors of Freeman Shoes in that price bracket are: Jarman Division of General Shoe, Nunn-Bush, the Bostonian and Mansfield brands, Wintthrop Division of International, Crosby Square Division of the



Shoe Corporation of America, and Weinberg Shoe Company. That pretty well covers it. He does not know of a Wall Streeter brand made by the Wall Shoe Company in Massachusetts. The various brands that he has just named, or the manufacturers of those brands, together with Roblee, are all competing for the same customers' markets that the Freeman Shoe Company are competing for.

It is not true that when an average type of family shoe store stocks a line of shoes, whether it is Freeman or some one of their competitors, that shoe merchant is not likely [fol. 247] to go out and also stock another competing line. The average shoe store of the type they are discussing today, in the experience of the witness, has two or more lines of men's dress shoes.

Q. Well, is that the way—do your salesmen encourage a store to stock your shoes and another competing brand? Is that part of your sales policy?

A. Not unless they are non-competitive.

Q. In other words, so long as it is a competing line in price and style, it would be advocated by your salesman that the store concentrate on one line?

A. If that line meets all his needs.

Q. From the standpoint of the retail merchant, that, you feel is good business for him, as well as good business for you?

A. In most instances.

The leased departments owned by his Company are primarily in men's clothing stores, with a few in department stores. In the figure that the witness gave, there are about six men's shoe stores. The brands of shoes that those have are Freeman, and they do carry others. Possibly price-wise the others are competing, but they give a little better style coverage. One line is Edwin Clapp. Considering shoe stores and leased departments together, they do carry other shoes: Stetson, Stacy Adams shoes, Crosby Square, Edwin Clapp. That about covers it. The price range of the Clapp shoes will start in the low 20's, \$22.00, \$23.00. They go higher than Freeman shoes. Stacy Adams would be in that price range too. The witness does not regard those as competing with the bulk of the Freeman line, but there is an overlap. There is a normal growth pattern in

their acquisition of these departments in recent years. No distinct increase in any particular period. In the last ten years they have increased the number of their own departments about ten percent.

The sale of men's fine dress shoes has remained rather constant in recent years. That was the nature of his testimony when he said his sales in 1959 on a pairage basis were about the same as ten years before. He couldn't answer whether his company's experience in being able to maintain a level of sales of that nature was common in the industry as to those manufacturers making men's [fol. 248] shoes. He didn't know their experience. He has not followed the trend of the pairages sold by their manufacturers in the men's shoe line because that information is pretty well lost in the statistics of the entire country's report. It doesn't spell that out. His activities with the National Shoe Manufacturers Association doesn't delve into any such information.

His company did have a pairage increase in 1959 over 1958. His company's \$20 million of sales in 1959 is the highest in the company's experience, dollar-wise.

His company does not have a make-up division in the true sense of the word. The few shoes they make up other than the Freeman regular line stock, would be less than one percent.

As to whether the witness testified on direct examination that his company was foreclosed from selling the franchise stores that counsel for the Commission showed him, the witness said our experience has indicated that the amount of effort spent on those stores generally rates little return on the efforts. Their Freeman brand is competing against the Roblee brand in those instances.

The witness knows of only one franchise store that carries their brand. It was just called to his attention last weekend as he happened to come through Syracuse, New York. He thinks it is the Ames Shoe Store in Syracuse. They do carry Freeman shoes in that store. He understands that it is a Brown-Bilt Plan. To his knowledge that is the only one.

The witness knows the McCoy Shoe store in Beloit. That store is on the franchise plan. As to whether they carry Freeman to the exclusion of Roblee, the witness doesn't

know about the exclusion. He doesn't know whether they have any Roblee shoes in the store. They do carry Freeman shoes to his knowledge. It is the witnesses' understanding that it is a Brown Franchise Store.

The study the witness made of his files regarding stores on the Brown Franchise Program that either were or are customers of his company was not a complete examination, but a rather cursory one. The witness has heard the name of Dutcher's in Altus, Oklahoma. He doesn't know if it [fol. 249] is on the Franchise Program. He knows at one time they did carry Brown shoes. The witness is not familiar with Hub Bootery in Miami, Oklahoma. He is not familiar with Bareis Store in Rochester, New York, other than the fact that he knows his distribution in Rochester, New York is not very good. That store carries Freeman shoes. To his knowledge that store is on the Franchise Program. The witness doesn't know the Peters Shoe Store in Glendale, California. He doesn't know if they carry the Freeman line. As to the Holiday in Anderson and Cleburne, Texas, the witness stated they do have an account there, but he doesn't know the name. When told the former name was Elwin, he stated that they did sell shoes in Cleburne. Maybe that is the account. As to whether Leo's Shoes in DeKalb, Illinois carries Freeman's shoes, the witness knows that their Illinois salesman mentioned a short time ago that they have no distribution in DeKalb, Illinois. That is one of the open towns where he must find an account.

The Masters Shoe store in Struthers, Ohio, he has heard of but can't say for sure whether it is on the program. He doesn't know whether they carry Freeman shoes. There is another Masters in Youngstown, Ohio. He is not sure about Struthers, but they did in Youngstown. He is not sure as to whether both were on the franchise program.

As to whether the witness was familiar with a store in Wapakoneta, Ohio, called Abbott's Shoes, he said that he might have information that was on the Brown plan. They did buy Freeman shoes. (The witness examines some papers.) According to information he has here, which goes back to 1956, they have bought them through 1959, with no orders for 1960. Because of no activity for 1960 it would indicate that the salesman, between October 15 of last fall and February 15 of this year, did not receive an order.

Wapakoneta had been a customer of Freemans. The salesman did not receive an order for the spring of 1960, for some reason or other.

Kerrs Shoes is their account in Monroe, Wisconsin. He doesn't know whether or not it is on the franchise program. They are a customer of Freeman. The witness [fol. 250] doesn't know whether or not the Freeman shoes replaced Roblee in the Kerrs Store. He has no information about that.

Q. But there are then franchise stores that do carry Freeman shoes?

A. It would appear so, from the information you have given me.

The witness agreed that the general philosophy of a retailer, is to have the type of shoes that are the easiest to sell and that please the customers if they generate the profit requirements. If a retailer has the type of shoe that meets his requirements in that respect, it is difficult at times to get him to change brands. As to whether there is quite a sales resistance by reason of the store owner's preference for one brand over another, the witness stated that preference, of course, would have to be based on profitable performance, the maintaining of standard turn-over on the merchandise and so forth. If he achieves his goals in that respect in his store operation, whether he will completely change to another brand depends on the size of the operation.

If it is an operation of the size that can only handle one line of men's shoes and he is getting all the satisfaction from the one line of men's shoes, the witness could not recommend that he change. These are some of the problems a salesman has in trying to introduce a new line in a man's store who already has a line with which he has satisfactory results.

In the course of marketing Freeman shoes, the witness has had the experience that other manufacturers have of getting new accounts and losing accounts. There is a turn-over in accounts. He said we lose accounts because they are lost to another manufacturer, they go out of business, or they become a part of a merchandising plan, such as the Brown-Bilt Plan.

His company does not necessarily have a sales policy that it follows as a rule of thumb of having an outlet or a number of outlets limited by the size of the community. That will often times depend on the type of community. Some towns are such that you can possibly sell a shoe store and a clothing store, or a shoe store and a department store, if there is an interest and a willingness on the part of both those retailers, and they can properly merchandise the lines in that area. This has happened in towns of 50,000. It would be a fair sized community. In a smaller area you would normally have one outlet.

The witness was asked whether the cities where the Brown Franchise stores are located, that he indicated on direct examination represented a market not available to Freeman, are the only stores in those communities that sell shoes. He said it could be in some instances, depending on the population of the town involved. One instance where a Brown Franchise store is located in the community and is the only store in that community is Dunkirk, Indiana. He doesn't know if it is on the list. It was at one time. It is the only shoe store in town. The year would be 1948 or 1949. Without checking a map, the witness would say the nearest town to Dunkirk is 15 to 20 miles. That town would be larger than Dunkirk and that town does have shoe stores.

When the witness used the term "Freeman Dealer" on direct examination, he was referring to an independent retailer customer of Freeman that carries their line of shoes. One of the criteria in considering whether an account was worth counting in the number of 3300 accounts was whether they had brought 100 as a minimum. Any dealer who uses Freeman shoes is considered an account, but this was a breaking of classification for this purpose. So far as total accounts or customers of all sizes, it is substantially more. It is about another 25 percent more. The witness would consider the Dun & Bradstreet report of 6,000 accounts as too high.

The figure of course is constantly changing. It is in the area of 4400.

The services made available by his company to Freeman dealers are for the purpose of helping them in their business, helping them to promote the product. Dealers need help and this was part of their program of helping them

without discriminating. Outdoor signs are available to dealers. They are made available to every one of Freeman accounts. There is a fee. He is not in a position to say [fol. 252] just what it is, whether the signs remain in the possession of Freeman and the dealer rents it or buys it. He doesn't know of any distinction made as to the size of the account in furnishing these signs.

The company has a Display Division. The service is available to merchants, but the Display Division was started originally to provide fixture service, window aids, and so forth for the Freedman leased departments. The various display materials are made available to the Freeman dealers also. The man in charge of the Display Division is also in charge or has been in charge of store planning. When he talks about store planning it is a pseudo architectural type of service. It is not a registered architect. If the merchant called in and a man is available, and he has a problem in expanding the shoe department, the Freeman service is available to give him counsel for that. The service is available to all who feel the need of it.

The witness does not have any idea how many shoe stores there are in Milwaukee. His company has 10 to 15 accounts in the city of Milwaukee. Those accounts are in varying degrees; some carry more of the Freeman line than others.

The Freeman line of shoes ranges from a retail price of \$11.95 up to as high as \$25.95.

The Freeman Company, either through salesmen or any other field representatives, does not furnish sales counseling service to its retail customers. If the salesmen do any of that kind of work it is not under the direction of the company.

[fol. 253] Redirect examination

. . . . .

There is a charge to the independent retailer concerning the display materials the Freeman Display Division designs.

The store in Beloit presently known as McCoy's was previously Merklands, which had been in Beloit for 40 or 50 years under that ownership, and had become a very substantial user of Freeman products, and down through



the years had developed great acceptance of Freeman in that particular store. When the store was sold by Merklands family to the McCoy's of Centralia, Illinois, they felt it would be to their advantage to continue with the Freeman shoes. The fact that this is the home office of Freeman possibly could have something to do with it, but Freeman could not sell the McCoy's in other cities, and they have 4 or 5 others in cities where Freeman does not have representation.

His company has three brand names under which they market their shoes; in the higher price line, the Bootmaker Guild, the popular price is Freeman, and the line of men's dress casual is Town Squire. The name Freeman will appear on all the shoes.

#### Recross-examination.

The witness said he could not answer whether the owner of the McCoy store in Beloit only owns one other store, and that is in Centralia, Illinois. There are other McCoy Stores through Central Illinois. It could be just a similar name. It is the same spelling. The witness cannot make the statement that all the McCoy stores are owned by the same person. He would amend his previous statement that McCoy's had 4 or 5 other stores. He cannot say definitely that they are all under the same ownership, although the [fol. 254] one in Beloit operates a store in Centralia. That is the only one under the same ownership to his knowledge.

Hearing Examiner Creel: I have one inquiry to make. As I understood your answer to a question on direct, you said you had been over this list of Brown Franchise Stores and found only one or two to whom you sold any substantial amount?

The Witness: No; to whom we were selling at the present time.

Hearing Examiner Creel: Then Mr. Burke inquired about several different stores by name, and you said you were selling to some of those at the present time, did you not?

The Witness: Yes, there were some.

Hearing Examiner Creel: And what I don't know, in making a comparison of the exhibits, is whether the stores he inquired about were on the list?

The Witness: Mr. Burke inquired about Kerrs, customers

in Monroe, which, to my knowledge are not on the list I saw; nor was the store in Wapakoneta, Ohio. It is not on the list, sir.

Hearing Examiner Creel: I see.

The Witness: But he had evidence our store sales dropped off.

Mr. Burke: I believe, your Honor, for clarification, Kerrs Shoes at Monroe is in that list that was examined by Mr. Freeman. It is in the Commission's Exhibit, as is Masters Shoes at Youngstown, Masters Shoes of Struthers; Holiday Anderson; Peters Shoe Store, Glendale; Bauers; the Hub Bootery in Miami, Oklahoma; Dutchers Shoe Store, and McCoy's in Beloit. I believe that store located in Wapakoneta is not, is not on the list.

Hearing Examiner Creel: Is not on the list?

Mr. Burke: No. It is a new store.

Mr. Rogel: His testimony, as I understand it, is there were only two or three of the stores you mentioned that he was selling to.

Mr. Burke: And we interrogated him also in regard to a group of stores that were also Freeman customers?

[fol. 255] Mr. Rogel: Of course, the record will indicate.

At this time Commission's Exhibit 141-A through 141-T, a several page tabulation headed "Stores on Brown Franchise Program as of January 1, 1960 Indicating Those Stores Which Joined the Program After January 1, 1955," was marked for identification. Commission's Exhibit 141-A through 141-T was received in evidence without objection, but with the condition that any check marks or penciled or penned marks which appear thereon are to be disregarded.

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May 5, 1960

RAYMOND S. SHANNON, called as a witness for the Commission, testified as follows:

Direct examination.

The witness was subpoenaed to appear here. He is presently the Vice-President in charge of sales of the Weyenberg Shoe Manufacturing Company, 234 Reservoir Ave-

nue, Milwaukee. In addition to their Reservoir Avenue facilities, the company has two factories at Beaver Dam, Wisconsin and Portage, and an office at Portland, Oregon.

As Vice-President in charge of sales, the witness supervises the sales of the organization. He has held that position about a year. Prior to that he was credit manager of Weyenberg. As credit manager his duties were to supervise and control the credits of the organization, and close coordination with selling. He passed on credit. Their organization is small, where your duties are coordinated. He had daily contact with the sales department.

The present Executive Vice President had preceded the witness as credit manager and whenever he went into the selling end of the organization, there was always a very close tie-up between the credit and selling in their organization. The witness had direct contact with the [fol. 256] salesmen when he was credit manager. When salesmen came into the office, and when they had meetings, quite often he was at the meetings. He supervised credits and many times on a new account he would call or write letters to try to bring about better results. He was in that position in the credit department since 1921.

The witness has never been affiliated with other shoe companies. The Weyenberg Company has been in business approximately 55 years. It is a Wisconsin corporation. The officers are: Mr. Weyenberg, President and Treasurer, Mr. R. J. Dempsey, Executive Vice-President, Mr. K. Nickel, Secretary. The witness is Vice-President in charge of selling. The company has selling divisions in their own organization—Portage Shoe Manufacturing Company, and the Great Western Shoe Company. They are not separately incorporated, they are selling divisions of Weyenberg. Their selling would be under his supervision. His company manufactures dress shoes and a small number of work shoes. The dress shoes would fall in a retail range of \$10.95 to \$21.95.

The brand names that they manufacture are: under the Weyenberg Division, Massagic; next would be the 4000 series, their Com-Flex line. That is the trade name. And they have an Aristocrat line, and their Olympic line. Then under the name of Portage they have Port-O-Peds, Comforted, Boulevard and Monarch. Portage is one of their

selling divisions, the Portage Shoe Manufacturing Company. That name would appear on the trade names he referred to. The company has a branch located in Portland, Oregon. It is financially complete. They ship shoes in carload lots or truckloads and distribute them. They are sold and distributed from Portland, in Oregon, Washington, California, down through San Francisco. That is the only operation of that kind.

At this time Commission's Exhibit No. 142, a tabulation entitled "Report of Sales in Terms of Dollars and Pairs Manufactured by Classes for the years 1948 through 1959," was marked for identification. The witness was shown Commission's Exhibit No. 142 for identification. It was prepared by their Secretary, Mr. Nickels. The figures were taken from their records. The Exhibit shows [fol. 257] the years from 1948 up through and including 1959, net dollar amount of sales; next is unit men's dress shoes; next, unit men's work shoes; children's shoes; and in 1951 we have the net Army shoes, 143,000. Those are the total figures for his company's operation. Commission's Exhibit No. 142 was received in evidence without objection.

His company sells their shoes to department stores, family shoe stores, exclusive shoe stores and clothing stores. They may sell a few shoes in the make-up division to jobbers, although that is a very small amount, if any. About 15 percent of their total output of shoes is make-up. That would be what they term their Great Western Division. He has supervision over that division as far as sales are concerned. All sales of the entire organization are under his direct supervision.

He has 55 salesmen which cover the entire United States. They are paid on a commission basis. They may have four men that start in new territories and they may pay them a drawing account until they develop their business, but otherwise their's is strictly a commission basis, no salaries. The company doesn't pay expenses. The company may withhold taxes, but they pay their own expenses. The company pays commissions at the end of each month.

Approximately 4500 retail customers are currently actively buying from his company. Terms of sale are according to the territory. In the State of Wisconsin and states

touching Wisconsin 2 percent, 30 days. The next states, 2 percent, 45 days. And in New England states, two percent, 60 days. Their service shoes are net. The reason for the varying time is because of the distance. Merchants that are removed from Milwaukee, it takes longer, possibly, for shoes to get there, say to California, than to Wisconsin, or to Illinois.

They do some national advertising on their shoes. That consists of advertising in national publications, such as Esquire, Time, True, Argosy and Life. The witness feels that shoes of their brand have good acceptance in the United States.

[fol. 258] The witness is familiar with the brands of shoes which constitutes his major competition in the country. Shoes in that category manufactured by Brown would be the Roblee line and the Pedwin line. He is familiar with the term Brown Franchise Store. It means to him a restrictive arrangement with the retailer, which provides that he is confining his purchases to the two Brown products, excluding conflicting or competitive lines. He acquired that information over a period of years from contact with salesmen and contact with other merchants.

As to whether he has conducted a study of this Brown Franchise Program as it may affect his business, the witness said we are quite constantly exposed to what salesmen may tell us about competition which they encounter on controlled stores or franchise outlets. And you don't particularly make a systematic study of it. It represents a certain futility to do so. You accept it. It is one of the things with which you are confronted. You just have to live with it, or try to live with it, and try to do your best. I think all controlled units, stores or departments controlled by manufacturers, or owned stores in department stores by manufacturers diminishes the opportunities of a manufacturer like the Weyenberg Shoe Manufacturing Company. His company has no controlled outlets, no factory owned stores or departments.

Q. Have you lost any actual business which you feel was due to the Brown Franchise Plan?

A. Well, we have letters from our salesmen and they tell about diminishing opportunities in their territories,

and we have had accounts that we have lost because of that fact.

Q. Because of their becoming Brown Franchise Stores?

A. Yes, we have.

Mr. Burke: I object to this line of inquiry. It calls for hearsay testimony, and it invites bringing into the record statements by people not on the witness stand. We have no way of cross-examining, and for all we know it is just a good excuse by the salesman as to why he is not peddling the shoes.

Hearing Examiner Creel: It is certainly true in this instance; but nevertheless, I am going to receive this kind of testimony.

[fol. 259] The Witness: I am not unmindful of the fact that in dealing with salesmen, some less conscientious salesmen do find excuses to justify their ineptitude at times.

Hearing Examiner Creel: If there are any particular accounts he is going to name that are not, in fact, Brown Franchise accounts, that can be readily established.

Mr. Burke: Part of my objection was founded on strictly hearsay; and the fact they are Brown Franchise accounts does not, in itself, provide an exception to the hearsay rule. After all, we cannot be bound by anything an independent retailer has to say.

Hearing Examiner Creel: I understand that; but the reason I consider this of some importance is that this will show certain accounts which presumably he lost at or about the same time they became Brown Franchise accounts. Now that doesn't prove the proposition that because they became a franchise account it was necessary that they give up the account. I did not mean that.

Mr. Burke: Because, after all, it is a decision of the retailer what kind of shoes he carries.

Hearing Examiner Creel: Perhaps my reason for admitting it will disclose that. You may proceed.

The witness' attention was called to Commission's Exhibit No. 141-M, a list of stores that went on the Brown Franchise Plan, and Emerlings located in Hamburg, New York, which is on the list, and according to the list, the store went on the Program on March 15, 1956. His company did sell to that store. At this time Commission's Exhibit No. 143 was marked for identification. The wit-



ness identified it as a photostatic copy of a record of Weyenberg shipments to Raymond J. Emerling, Hamburg, New York, from 1946 through 1959. It is a copy of a record which is kept in the ordinary course of business. The figures shown in the column marked Dollar Volume are in dollars. So the sales, such as 1,105 in 1959, 4,835 in 1953, and in 1946, 2,132, are dollar sales.

[fol. 260] The witness was asked to explain the various columns that appear, 1 through 6, on the exhibit. The first column would be what they call their 300 series, their Port-O-Peds, which is a feature shoe. They only sold three pairs. The next column, too, is a featured shoe with a sponge rubber piece between the inner and outer soles, Massagic. That price class presently starts from 18.95, \$19.95 to \$21.95. The top or the top half of Brown's Roblee would possibly be about in that classification. That may change a little bit. Most of their shoes in that classification are priced a little higher than 50 percent of the Hoblee line. Unit 3 on the card is the Aristocrat grade, around \$16.95, \$17.95: No. 4, that would be their lower grades, could be all the way from \$10.95 up to sixteen, or \$14.95. Column 6 is all work shoes.

The witness' attention was called to Commission's Exhibit No. 141, page Q, the Blynns Shoe Store, Inc., in Pittsburgh, Pennsylvania. That store became a Franchise Store February 27, 1959. They did sell to that store. At this time Commission's Exhibit 144, a copy of a ledger card for Blynn's Shoe Store, Inc., was marked for identification. It is a photostatic copy of one of the company's records kept in the ordinary course of business. Commission's Exhibit 143 and 144 were received in evidence without objection.

The witness' attention was called to Commission's Exhibit 141, page K, the name Gryder's Shoes, in Biloxi, Mississippi. It is his recollection that they sold to that store. He does not know whether the store is still located at 217 W. Howard Street, or if the store was formerly at 314 LaMeuse Street. He has a recollection of one of the stores being changed, but he does not know specifically if that was it. Commission's Exhibit 145, a ledger card for the Gryder's Shoe Company, was marked for identification. It is a copy of their records. The handwriting on the Exhibit was

pointed out to the witness, and he was asked what it was. It is not the witness' handwriting. He doesn't know what it says. Commission's Exhibit 145 was received in evidence without objection.

At this time Commission's Exhibit 146, a letter dated June 19, 1958, and Commission's Exhibit 146, a letter [fol. 261] dated April 22, 1960, were respectively marked for identification. The witness identified Commission's Exhibit 146 for identification as a letter that he sent to John Anderson, a Weyenberg salesman, who covers the State of Iowa, on June 19, 1958, concerning the Blinkinsop Shoe Store in Marengo, Iowa. The handwriting on the Exhibit is the writing of their salesman in response to the typewritten portion of the letter. This is the witness' letter to Mr. Anderson, and on the bottom is his reply. Commission's Exhibit No. 146 was offered into evidence.

Mr. Burke: I object to the offer of this exhibit. It is self-serving, and contains certain statements by somebody, a Mr. Anderson, whose handwriting is not the statement of this witness. We have no opportunity of cross-examining this individual, and I object to the offer of this exhibit.

Hearing Examiner Creel: Maybe I had better read it.

Mr. Rogel: Yes, sir, here it is. (Handing document to the Examiner.)

Hearing Examiner Creel: The objection is overruled. Commission's Exhibit No. 146 is received in evidence.

The witness described Commission's Exhibit No. 147 for identification as a letter he wrote to their salesman on April 22, 1960, and on the face of the letter is the reply from Mr. John W. Anderson, their Weyenberg salesman in Iowa. The red printed portion at the bottom is the historical record of their shipments to that store in Marengo, Iowa. It shows the shipments from 1953 to 1960, by grades and by dollars and cents. Commission's Exhibit No. 147 was offered into evidence.

Mr. Burke: I make the same objection to this letter, Commission's Exhibit 147; self-serving; hearsay. We have no opportunity of cross-examination as to the party writing that.

Hearing Examiner Creel: May I see that?

Mr. Rogel: Yes. (Handing document to the Examiner). [fol. 262] Hearing Examiner Creel: That objection is also

overruled, and Commission's Exhibit 147 is received in evidence.

Commission's Exhibit No. 146 indicates that they were shipping to this company from 1946 on. It is a record of work shoe shipments only, with the exception of about 16 or 17 pairs. The witness cannot recall whether his company was selling them dress shoes in 1946. He thinks there may be records at his office that go back to 1946. He will determine this during the noon hour.

At this time Commission's Exhibit 148, a letter on Weyenberg stationery dated April 22, 1960, was marked for identification. Commission's Exhibit 148 for identification was identified by the witness as a letter he sent to their salesman, and it was returned with a long-hand reply. It was sent to Harry A. Jones, who is the Weyenberg representative in Nebraska and South Dakota, concerning—his long-hand notation pertains to John Bauer of Beatrice, Nebraska. Commission's Exhibit 148 was offered in evidence.

Mr. Burke: I object to the offer of Commission Exhibit 148. It is hearsay; it is self-serving, and obviously, from the language used in it, it is not in the ordinary course of business. It very clearly appears that this seems to be a part of making evidence, that it might be used in a hearing such as this. It is clearly objectionable for what it shows on its face in that respect. It was not kept in the ordinary course of business. We have no opportunity to cross-examine the man whose handwriting appears on this document (Handing document to the Examiner for inspection).

Hearing Examiner Creel: I will sustain the objection to this document.

The witness was shown Commission's Exhibit 141-L and his attention was called to the store listed there as Bauer's in Beatrice, Nebraska, with the indication that it went on the Brown Program in January, 1956. As to whether his [fol. 263] company ever tried to sell that store, the witness would say, yes, on the basis of the letter received from their salesman. His salesman has reported to him that he had tried to sell that store. To the witness' knowledge they have never had any sales to that store. It is not an account at this time to his recollection. They have 4500

accounts on the books, and he would not know every one. He would have to check the records.

Commission's Exhibit 149, a letter dated May 2, 1960 signed by Ken Williams was marked for identification. The witness identified the document as a letter he received from their branch at Portland, Oregon from Ken Williams. Commission's Exhibit 149 for identification was offered in evidence.

Mr. Burke: I object to the offer of this exhibit. It is a statement by some party who is not present and available as a witness for cross-examination. The date of this document and the contents of it obviously indicates it was for the purpose of developing some kind of evidence for this case. If Mr. Williams, as the signer of this, was made available for cross-examination, that would be one thing; but to have a man unavailable, and making a self-serving statement of this nature which is not in the ordinary course of business of the Weyenberg Shoe Company is objectionable.

It has also just come to my attention, this Exhibit 147, by reason of its date and what appeared in Commission's Exhibit 148, that that actually has the same lack of validity from the evidentiary standpoint as 148. This is not in the ordinary course of business. It was purported to be, but on examination, it quite obviously a fishing expedition; there is no opportunity for cross-examination.

So I object to the offer of Commission's Exhibit 149 that is being offered, on those grounds; and I also move that Commission's Exhibit 147 be stricken.

Hearing Examiner Creel: Well, your motion with regard to Exhibit 147 is denied.

Let me read the other one. (Examining exhibit).

The objection is overruled. Commission's Exhibit No. 149 is received in evidence.

[fol. 264] As to the name Les Weigand on Commission's Exhibit 149, and the extent of his territory he covers the greater part of Washington and part of Montana. That would be eastern Washington. The salesman Paul Mehan covers all of Oregon. Sam Brown covers the northern part of California. Clark Penner covers the City of Portland Jim Clark covers part of Idaho and part of Washington too.

Hearing Examiner Creel: I might say to both of you gentlemen, that this last exhibit is hearsay twice removed, and I am going to be reluctant to base a finding on this type of evidence. The mere fact that I have admitted it is not to be taken in any such manner.

Mr. Rogel: The exhibit is corroborated by other evidence, your Honor. I am merely offering it to show customers of Weyenberg.

Hearing Examiner Creel: It may well be. I was just putting you on notice that I didn't think to much of the quality of the evidence.

Mr. Rogel: I understand that.

In the past week the witness had occasion to examine the list of Brown Franchise Stores which is in evidence as Commission's Exhibit 23 and 24. There were stores that he recognized. He considers them to be desirable types of retail outlets for their products. At one time they were making sales to some of the stores on the list. As to whether they were making sales to any of the stores on the list presently, it is his recollection that they were selling Roe's at Huntington, Brown and Roe. That is the only one he seems to recollect on the list. (A five minute recess was taken to enable the witness to examine the document). As to the stores the witness recollected from the list: Bishop Shoe Company is very familiar, in Pennsylvania, Bellevue. Gryder's at Gulfport, Mississippi, and Faflik in Cleveland. And the Beaver Bootery at Beaver Dam, Wisconsin. He didn't know if it was familiar.

This constituted all of the names he was familiar with, although he looked at the list rather hurriedly. His company is presently selling their shoes to the Beaver Boot-[fol. 265] ery. There are several Faflik stores in Cleveland, four or five. Whether they are selling the specific one on there he doesn't know, but they are selling to Faflik in Cleveland. He doesn't know if they are all under the same ownership.

Q. As the sales manager of your company, or as the Vice President in Charge of Sales, do you feel you have the same opportunity to sell to this list of Brown Franchise accounts as to other retail dealers?

Mr. Burke: I object to the question; it is argumentative.

Hearing Examiner Creel: It certainly calls for an opinion; I will overrule the objection.

By the Witness: A. No, I don't.

His answer is based on the restrictions under or imposed by the Brown Franchise on the accounts. They are precluded from buying conflicting lines. So Weyenberg salesmen, more or less, recognize that fact and sense the futility of contacting them.

As to why the total number of pairs of men's dress shoes sold by them in 1959 was less than total number of pairs sold in 1948, it is his belief that the expanding operations of manufacturers who own and operate their own stores and departments in controlled outlets contributes to diminishing opportunities for independents like themselves. By controlled outlets he means outlets like the Brown franchises, or factory controlled departments, whether it is wholly or generally or whatever it may be.

Q. You said diminishing opportunities. Do you feel that today there are a less number of available retailers, prospective customers, than there were ten years ago

Mr. Burke: I object to the form, what he feels about something. It calls for an opinion and conclusion. There is no foundation laid as to whether this man is qualified.

Hearing Examiner Creel: I will sustain this objection. [fol. 266] I do think he should be asked what he knows, and if he knows the facts. I don't know if he does or not.

Mr. Rogel: Your Honor, he is the sales manager of the company; and since 1921 he has been actively attempting to sell shoes and supervise salesmen. I can conceive of no person more qualified to describe the market conditions.

Hearing Examiner Creel: That may well be. You can ask him what he knows, not what he feels about it.

By Mr. Rogel:

Q. Mr. Shannon, in your opinion is there a diminishing number of prospective customers for your shoes than there was ten years ago?

Mr. Burke: Same objection, your Honor.

Hearing Examiner Creel: Well, I think it is subject to the same objection as the other question was. If he knows



he may tell us; but, on the other hand it seems to me it is something that is not capable of exact proof. I don't know whether anybody knows the exact number in any given year. So I will let you ask him for his estimate of the situation.

The Witness: Pardon me. As for factual information, I cannot answer, but I have to answer categorically.

Mr. Rogel: As you mention, I do not believe there is any set of figures on which we can rely to compare the number of independent shoe outlets not affiliated with retail chain or manufacturers with the same figure in 1948. Those figures, to my knowledge, are just not available. And the only way I know to get this fact into evidence, if it is a fact, there has been a diminishment, is to ask someone who is actively engaged in the business, nation-wide, both from his own experience and the experience of his salesmen.

Mr. Burke: I would say some foundation should be laid to indicate this witness' knowledge.

Hearing Examiner Creel: I think you are right. I think if [fol. 267] you will ask the witness what the basis for his knowledge, or opinion, or estimate would be, then I will permit you to ask him what his estimate of the situation is.

Mr. Rogel: All right.

By Mr. Rogel:

Q. Have you been informed or have you been made aware by anyone in your organization, or by any study you have made that there are less prospective retailer customers for your shoes than there were in 1948?

Mr. Burke: I object to the question. It calls for hearsay.

Hearing Examiner Creel: Overruled. Go ahead, sir.

By the Witness:

A. I think I can go back a number of years and establish the fact that we possibly at one time had maybe 1500 or more accounts on our books than today. From contact with our salesmen, when we go over territories and towns in which we don't have outlets—and I don't have the towns in front of me—there is an ever increasing explana-

tion that it is the factory-owned stores, or controlled stores, or controlled departments, or factory controlled departments. And without being specific, statistics bear out the fact that factory-owned stores' business has increased tremendously in the last ten years.

By Mr. Rogel:

Q. Well, sir, then in your opinion, today there are less prospective retailers who would be prospective outlets than there were ten years ago?

A. Yes.

Hearing Examiner Creel: Are there any reliable figures of any kind which would show the number of shoe outlets in existence today, and for past years, that you know of?

The Witness: On the spur of the moment, no, I don't.

[fol. 268] Cross-examination.

As to whether it isn't a fact that net sales for the witness' company in the year 1959 showed an improvement over 1958, the witness said, in units, no. As to dollars and cents the witness said, there was a price rise in the meantime. He thinks their dollar earnings for 1959 were higher than in 1958. The correct total sales figure for his company for the fiscal year ending December 31, 1959, was \$17,884,000.00. The figure \$17,722,379 was the company's reported estimate. Net earnings for the year on sales were \$1,165,648. This is about 6 percent of sales. That earnings figure was a record earnings for the company.

In the annual report published by his company for the twelve months ending December 31, 1959, the balance sheet as of December 31 showed his company's current asset position to be \$9,413,800. Included in that was \$1,600,616 of cash, and a million dollars in marketable securities in addition to the accounts receivable and inventories. Then current liability as at December 31, 1959, which included accounts payable, dividends payable, and the normal accrued liability for taxes on income, is \$1,530,696. That gives his company a very good current ratio. They worked hard for it.

Also included among the several national publications in which his company advertises are Holiday and Sports

Illustrated. The purpose of their national advertising program is to establish brand recognition for their product in the industry. He thinks any advertising is pre-selling. It is an important factor in their success.

. . . . .

The categories under which their shoes are marketed are the Weyenberg line and Portage, two different selling organizations. The shoes are identical. The Port-O-Ped and Massagic are identical, but are marketed under different brand names and through different selling organizations. There is a dual sales organization, one for Portage and one for Weyenberg. There are 30 salesmen on Weyenberg and 25 salesmen out for Portage. In isolated cases the ones out of Portage sell both. The Weyenberg salesman will sell the Portage line in the Rocky Mountain States where there is one salesman to cover the area. Otherwise there is a sharp demarcation between the two groups of salesmen.

The salesmen do not call on the same prospective customers because if they did they would be competing with their own organization. It is obvious that if a dealer stocked Port-O-Peds no purpose would be served for the salesman of Massagic to call on him. As to whether that is the way of selling shoes to retailers works on various other brands that are competing, namely, if a retailer has a certain line, a salesman that tries to get into that store with his competing line may run up against the same type of sales resistance, the witness answered, assuming the entire lines are comparable in so far as quality and styles and patterns, that would be true.

The same identity applicable to Massagic and Port-O-Peds is applicable to Com-Flex and Comfo-Treads. They are the same shoe but are marketed under different selling organizations. The same principal applies to Aristocrat and Boulevard. There could be a few isolated cases of overlap between the higher price range of Aristocrat and Boulevard into the Com-Flex or Comfo-Tread. It is possible that Olympic and Marquette, which is the low end, may in turn overlap into the Boulevard and Aristocrat brand names.

The Roblee line competes with Port-O-Ped line and Massagic, which are one and the same from the standpoint of price. There are quite a number of other shoe brands of other manufacturers that also compete with Massagic and Port-O-Ped lines. Everybody is competing for the same market on comparable brands as to price and style and quality.

Among competing brands for Massagic and Port-O-Peds would be shoes manufactured by Freeman, Jarman, Wall Streeter, the Nunn Bush and the Edgerton lines, Crosby [fol. 270] Square, Bates Shoe Company to some extent, it is pretty much geographic, Mansfield and Bostonian and Plymouth and the Winthrop brand of International. These brands all cover pretty much the same price category. As to the Pedwin line, it is also competitive in the lower end. They start at \$11.95, \$12.95, \$13.95.

In the price range of shoes that would be competitive with his Aristocrat, Boulevard, Olympic and Monarch, along with Pedwin, would be a number of other shoe manufacturers. Various brands of A. S. Beck, that is the Shoe Corporation of America, the Douglas brand of General Shoe could be in the lower end of the line. Flagg Bros. is not so much a competitor. It is a different type of merchandise. The Calumet brand is a different type of merchandise. It goes down a little lower—\$8.95. He doesn't regard those in the competitive area. The Huth-James brand would be more or less competitive with Leverenz Shoe Company for the same reasons he has just mentioned. The Fortune brand of General Shoe would be in the lower end of the line. Another brand marked Great Northern is General's make-up line.

Make-ups sort of lose their identity as far as competition with brand names are concerned. Brown has some of that, too. About 15 percent of his company's line is make-up. They may sell make-ups to a family shoe store, a chain of stores. Some could be nationwide. It would include types like J. C. Penney, Montgomery Ward or Sears, Roebuck. Half of their make-up goes in that area. The other half is to a different type of operators which the witness would classify as the family shoe store type. Conceivably some of these operators could be located in shopping centers. It is quite obvious that shopping centers are becoming of

increasing significance as far as the merchandising of their shoes is concerned.

Getting back to the lines of competitive brands to Aristocrat, Olympic, Boulevard and Monarch grades, the Hardy line of General Shoe is possibly on the lower part of the competitive area. He has never heard of Jelko line. In some cases he would regard John E. Lucy Company as a competing brand. They are a smaller company. Weyenberg [fol. 271] is up in the first twenty of the shoe companies as far as dollar volume, but the witness stated there could be quite a gap between the top three. Thom McAnn line of Melville would not be a competitor or have competing brands. They have \$10.95. The Pilgrim brand of Plymouth Shoes could be a competing brand. The Biltomore brand of Florsheim is the lower end of the Florsheim line. Part of the Florsheim line would compete with the Massagic and Port-O-Peds. They start at \$19.95. Florsheim and Nunn Bush would be competitive with the lower part of Massagic and Port-O-Peds. Stacy Adams is a little higher merchandise. Johnson-Murphy is higher priced.

The price range of the Massagic line is \$15.95 to \$21.95. Com-Flex and Comfo-Tread are \$14.95 up to \$17.95. Aristocrat and Boulevard, \$15.95 and \$16.95, just a short line. Olympic and Monarch brands start at \$10.00 and go up to \$14.95.

It is Mr. Shannon's experience as a sales manager that there is a turn-over in accounts where you acquire new accounts for your shoes and lose accounts over a period of a year's time. You have business mortalities the same as human mortalities. This could happen either by reason of a store going out of business or by reason of a store changing to another brand line of merchandise different from yours. That happens in the shoe business when a store owner may choose to buy one of the competing brands of shoes that compete with your line of shoes. It is also true that your line replaces another person's line. And when your line replaces another shoe manufacturer's competing line, that manufacturer has lost an account to that extent. It is part of his salesman's job to go out and try to sell his line of shoes in preference to some competitors' line. It is part of doing business.

The Weyenberg brand of shoes is sold in a store called

Beaver Bootery at Beaver Dam, Wisconsin, if there is a Beaver Bootery. He doesn't know whether Roblee shoes are sold in that store. It is a very good account of Weyenberg's, a very fine man.

The name Bob's Shoes in Oelwin, Iowa, is familiar. He could not say definitely if it is a good account. He doesn't [fol. 272] know whether his company sells shoes to that account. The witness doesn't know if Vandenburg's Shoe Store in Portland is an account of theirs. As to Vandenburg's in Oswego, Oregon, he said the records are kept in Oregon.

The witness was asked by Government counsel a week ago to look over this list of franchise stores and see if he recognized stores. That is the basis on which his testimony was given as to what he recognized from looking at the list. As to whether the witness is familiar with a Wesley Spellman store at Portland, Oregon, he said, there is no use talking about Portland, Washington or California. I don't know. He would not have personal knowledge unless he had the records. Unless it was in one of those letters that was introduced. He really didn't have personal knowledge in regard to that.

The witness doesn't know whether his company sells the Perkins Roberts Shoe Store in Chickasha, Oklahoma. He doesn't know if the Bratton Quality Shoe Store of Lebanon, Pennsylvania, is an account. His company has sold Bishop's Shoe Company, Bellevue, Pennsylvania, over the years. Whether they do today or not he doesn't know. Bishop's Shoes at Mount Oliver, Pennsylvania, would be the same thing. The Hoover Shoe Store in Oregon would be outside his acquaintanceship. He does not recognize Bartel's in Middletown, Ohio. The name McKinnon's B & M Bootery, Antigo, Wisconsin, doesn't strike him. The same Steeles Family Shoe Store in Sulphur Springs, Texas, is not familiar. They are selling some of the Faflik Stores in Cleveland, but which ones he couldn't tell offhand.

In preparing for his testimony the witness didn't check his records. He went through hurriedly. It would take him hours. The name of Fogerty Shoe Store is familiar, but he doesn't know. The store down the street, the Charles Strauss Store, is a customer of Weyenberg. The witness doesn't think he has any other shoes other than Weyenberg.



It is not a plan account. Charles Strauss buys shoes. They have no plan accounts. They have no control over Charlie [fol. 273] about his purchases. He is free to buy from anybody. It so happens he chooses to buy his shoes from Weyenberg Shoe Company, and he doesn't buy any other shoes to the witness' knowledge. He is a good customer.

Q. Now, if a salesman of a competing brand were to call Mr. Strauss, isn't it a fact that salesman would find it somewhat futile to try to put a competing brand in Mr. Strauss' store?

Mr. Rogel: I object. It calls for speculation, and this man is obviously not the one to answer; he would not be able to answer.

Mr. Burke: This man testified on direct examination that salesmen don't have the same opportunities calling on Brown Franchise stores, and I am just asking the same kind of question in regard to a store that is one hundred percent Weyenberg.

Hearing Examiner Creel: I will overrule the objection. Let him answer if he can.

By the Witness:

A. Charley Strauss has freedom to purchase any line he wishes to purchase; and I presume if someone did try to sell him they ~~would~~ have a hard time. I am perfectly willing to answer that question.

By Mr. Burke:

Q. He is a satisfied customer; he likes the Weyenberg brand of shoes he is selling, and for that reason he does not choose a competing line of shoes?

A. That is right, and he signs no agreement about it.

Q. But he doesn't choose to use a competing line of shoes?

A. I presume not. There is no compulsion about his buying our shoes.

They furnish retailers with sales aids, such as display fixtures, to help them in the merchandising of Weyenberg shoes. The retailers pay for neon signs in the windows.

His company furnished the sign that Mr. Strauss has at 214 Wisconsin, which has the name Weyenberg that lights up. Signs of that nature are not furnished to every customer. [fol. 274] There is only Charlie Strauss in the United States. The witness would be very happy to have more. They do not furnish other sales aids or helps to their customers such as accounting materials or record keeping. Some salesmen, the more capable ones, will consult with the merchants in helping with merchandising. Others don't bother with that.

The witness was shown Commission's Exhibit 143. It is an historical record of the account. The columns on the left-hand side of the Exhibit with numbers from 1 to 6 have to do with certain classifications of shoes. No. 1 is Massagics, starting at \$15.95. No. 2 is a kip label, which are calf skin, starting at eighteen—that is the retail price. No. 3 would be the Aristocrat and the 4000 series. The 4000 series is somewhat comparable to what their Aristocrat used to be. The company came out with the 4000 Com-Flex and Compos-Treads series about a year ago. It did what the Buick Company did, changed the names and the grades. It is a bit different type of shoe. They were a feature shoe. Column No. 4 is Olympic and Monarch. No. 6 would be work shoes. The work category would include service shoes. It would include some insulated boots. Huth-James have boots which could be comparable. They were competitors in that Huth-James may have some boots that compete with the lower end of Weyenberg's boot line. About 6 or 7 percent of the business of Weyenberg is in the classification of boots, utility, work or service shoes. Their make-up production is 15 percent of the total company business. That leaves a balance of about 78 percent for their other brands of shoes.

Commission's Exhibit 146 is a letter dated June 19, 1958. It was written by the witness in connection with the preparation for his testimony in the Anti-Trust case. That is the same kind of information he was seeking out in regard to the letter of April 22, 1960, which is Commission's Exhibit 147. And the witness testified in the Anti-Trust case.

Weyenberg's credit terms are 2 percent, net 30 days, in Wisconsin and states touching Wisconsin, next states fur-

ther removed are 2 percent, net 45 days, and farther removed, 60 days.

[fol. 275] There is a Belk shoe store that is a customer of theirs. It is located in North and South Carolinas. They are general stores, clothing stores, department stores. It is a sort of chain of shoe outlets. Their discount from Weyenberg would be the equivalent of about 5 to 6 percent.

The witness was shown Commission's Exhibit 144, the sales record for Blynn's Shoe Store. As to whether it was a new account beginning in November, 1957, the witness said, that is the assumption. He wouldn't know whether Blynn's Shoe Store was in business prior to November, 1957, without checking.

Weyenberg has four plants. In each plant they make a different grade of shoes. Their total employment is about 1500. The stock of Weyenberg Shoe Manufacturing is listed on the American Stock Exchange. It has been for 20 years.

#### Redirect examination.

They have two factories at Beaver Dam. Five or six hundred people are employed there.

As to whether Weyenberg advertises a price range in its national ads or whether they put the specific prices of shoes indicated, the witness said, Massagic is advertised at \$15.95 and up. They follow the same procedure with their other lines.

Commission's Exhibit 150, a photostatic copy of the ledger card of Weyenberg Shoe Company for Blinkinshop Shoe, Maringo, Iowa, was marked for identification. This record covers sales from 1947 through 1959.

Commission's Exhibit 151, another record of Weyenberg Shoe Manufacturing Company, showing shipments to Blinkinshop Shoe Store during January, February and March of 1960, was marked for identification. Commission's Exhibits 150 and 151 were received in evidence without objection.

[fol. 276]

May 6, 1960

GEORGE E. FRIEDLY, called as a witness for the Commission, testified as follows:

### Direct examination.

The witness is here under subpoena. He is employed by the Leverenz Shoe Company, Sheboygan, Wisconsin, as Assistant Sales Manager. His duties comprise working with their retail salesmen, working as liaison man between the home office in Sheboygan and their salesmen on the road in the various states that they cover, and their independent retail outlets they serve throughout the country. In addition to that he handles the advertising and much of the sales correspondence that comes in relative to various situations that develop in the territory. He has been in that job about 4 years, and with Leverenz a little over 6 years. For the two years prior to becoming Assistant Sales Manager, he traveled on the road for the company in upstate New York as a salesman.

His company is a corporation. The principal officers are: Mr. Clarence Leverenz, President, Mr. Carl Esch, Secretary-Treasurer, Mr. Robert Leverenz, Vice-President, and Mr. John Esch, Vice-President in Charge of Sales. The company is 41 years old as of April 1. Its gross sales in 1959 were about 3 million dollars. Pairage in 1959 was about 575,000 pairs. They have three manufacturing plants: one is in Sheboygan, the main factory, then New Holstein, Wisconsin, and one in Valders, Wisconsin. Leverenz has close to 400 employees.

His company distributes 90 percent of their shoes through independent retail outlets. The other 10 percent would be make-up business, some to jobbers and some to direct sale houses. They have between 20 and 25 salesmen traveling for them. They sell shoes throughout the country with the exception of the southern states, the Carolinas, Florida, Georgia, Alabama, Mississippi. They have about 3000 customers or dealers. Leverenz produces exclusively men's and boy's shoes, in the popular price range between \$7.95 and \$12.95 retail. Their salesmen sell the complete line, men's and boys'. Their two major brand names are Calumet and Lake Line.

[fol. 277] He is quite familiar with the lines of their competitors. The Brown lines in competition with them are Pedwin and Buster Brown boy's shoes. Pedwin and Sherbrook are the same shoes.

The Pedwin line is in competition with them because

of its price range and features. It is generally conceded they are shoes of comparable price range and are similar style-wise as to styles that each line has in common. Both Pedwin and his two lines would be sold to the same type of customer. They are particularly interested in the independent retailer who is interested in a brand in the price range of \$8.95, \$9.95 and \$10.95, the popular-priced brands. They are both trying to sell the same type of consumer, the young men. His company is particularly interested in the young men's segment of the shoe business.

In his capacity as Assistant Sales Manager the witness does a lot of traveling through the country and talks to salesmen and customers and competitors concerning industry condition. He attends shoe shows. He reads trade papers and publications in the shoe industry.

The witness' attention was called to Commission's Exhibit 141-J, the Winona Bootery in Winona, Minnesota which went on the Brown Franchise Plan December 16, 1958. That was a very good account of Leverenz for many years. Then Commission's Exhibit 152 was marked for identification. It is a photostat of a sales record of their sales to what was formerly the B & D Shoe Store, now the Winona Bootery, from the years 1952 through 1959. The record was kept in the ordinary course of business and is one of the regular sales records the company keeps for each account on its books. Commission's Exhibit 152 was received in evidence without objection.

From Commission's Exhibit 152 the witness testified that sales from Leverenz to that store in 1958 was \$2,090.85. The figures in the right-hand column were the total sales from his company to that store for the years 1952 through 1959. The figures in the middle of the record were those sales for the different months of the particular [fol. 278] year. Leverenz has made no sales to that company during 1960. They received no complaints about their shoes during or prior to 1958 from the Winona Bootery. They are in the process of developing another outlet in Winona, Minnesota. They do have another store they are selling some shoes, the Arens Shoe Store. Sales to that store are not in the volume they were to Winona Bootery in 1958. At this time Commission's Exhibit No. 153 was marked for identification. It is a photostatic copy

of the sales record of Meyer's Shoe Store in Watertown, Wisconsin from the year 1953 through 1956. It is a photostatic copy of the sales record of the company. It is a record kept in the ordinary course of business.

On Commission's Exhibit 153 the figures in the right-hand column under the term "Shipments" indicate the dollar amount of shipments for the particular year that is shown in the extreme left-hand column. And the figures shown for the various months throughout the respective years are accumulated to add up to the figures in the right-hand column. The right-hand column is the total for the year. This was photostated within the last ten days from the company's records. The attention of the witness was called to the year 1954 which showed one sale for June, \$695.73. That is not the only sale. Maybe he made a mistake. This is the sum, the cumulative total for the half year: January, February, March, through June, six months. The \$1316.10 for the year, is the difference between this and this, (indicating on the exhibit). This is the remaining six month's sales. As to whether this is a record kept by month, in the initial card—at one time they did make the records monthly, they posted monthly. You will notice in some instances where it was done.

Commission's Exhibit No. 153 was received in evidence without objection.

The witness was shown Commission's Exhibit 141-T and his attention was called to the Meyer Shoe Store at 206 Main Street, Watertown, Wisconsin, which went on the Brown Franchise plan August 2, 1956. This is the [fol. 279] same store that Commission's Exhibit 153 refers to. He remembers no complaints about their shoes from that store. Any such complaints would have come to his attention. He doesn't believe they have been able to obtain another outlet in Watertown, Wisconsin at the present time. They have lost that account.

Commission's Exhibit 154, was marked for identification. It is a photostat of a letter written to Meyer Shoe Store in Watertown, Wisconsin by the witness on the 18th of May, 1956. Commission's Exhibit 154 for identification was offered in evidence.

Mr. Burke: I object to the offer of Commission's Exhibit 154, as being self-serving; not binding on this respondent.



For that reason, I believe it is not proper evidence of any—it has no probative value, and should not be admitted in this proceeding.

Hearing Examiner Creel: Perhaps I had better read it.

Mr. Timony: Yes, sir. (Handing document to Hearing Examiner).

Hearing Examiner Creel: I will overrule the objection. Commission's Exhibit No. 154 will be received in evidence.

Hearing Examiner Creel: With respect to this last exhibit, I don't know what it proves, except that they tried to keep the account.

At this time Commission's Exhibit No. 155 was marked for identification. This is a letter from G. H. Meyers of Meyers Shoe Store, Watertown, Wisconsin, dated March 8, 1956. It is not in reply to the previous exhibit. It is prior to that letter. Commission's Exhibit No. 155 was offered into evidence.

Mr. Burke: I object to the offer of Commission's Exhibit No. 155. It is not binding on this respondent; is self-serving; the respondent has no opportunity of cross examining the writer of this letter.

Hearing Examiner Creel: I will read it.

Mr. Timony: Here it is, Your Honor, (Handing document to the Hearing Examiner).

[fol. 280] Hearing Examiner Creel: I will overrule the objection. Commission's Exhibit 155 is received in evidence.

The witness wrote the letter, Commission's Exhibit 154, after a discussion with their salesman, Walter Vatovetz, their Wisconsin representative, about the account. He came into the office and mentioned that Mr. Meyers had told him that he was considering going on the Brown Franchise Plan, and he hoped that the company would write to him and see whether they might be able to dissuade him from doing this, and consequently retain him as an active customer of theirs. And this is exactly why the letter was written.

At this time Commission's Exhibit 156 was marked for identification. The witness identified it as a photostatic copy of their sales record for the Emerling Shoe Store in Hamburg, New York, from the year 1949 through 1957. It is a record that the company keeps in its files. The

Emerling Shoe Store of 15-17 Main Street, Hamburg, New York, shown on Commission's Exhibit 141-M as having gone on the Brown Franchise Plan on March 15, 1956, is the same shoe store referred to in Commission's Exhibit 156 for identification. The address is different, but they probably have moved. Commission's Exhibit 156 was received in evidence without objection.

When the witness was a salesman for Leverenz prior to becoming Assistant Sales Manager, he traveled out of upstate New York. During that time he contacted the Emerling Shoe Store in Hamburg. He never sold them shoes. He stopped being a salesman for Leverenz in September, 1954. He was the only salesman for Leverenz covering Hamburg, New York at that particular time. The sales shown in Commission's Exhibit 156 for 1954 and prior years to that shoe store were sold by another Leverenz salesman, Charles Oslund. The witness took over that territory when Oslund had a heart attack about the beginning of 1954, and the witness traveled that territory for him while he was convalescing. So the sales by Leverenz to Emerling during 1954, were made either [fol. 281] through the salesman from whom the witness took over the territory, or through mail orders.

The witness is familiar with the term Brown Franchise Plan. He has gotten that knowledge from talking to dealers probably more specifically from various of the company's salesmen, and other salesmen that he has talked to. He would imagine he has talked to other manufacturers about the Brown Franchise Plan. Just off hand he doesn't remember anything specific. He has talked to their retail customers about the Plan.

Q. Do you remember any specific instances of talking to those customers?

Mr. Burke: I object to the line of questioning; it is leading up to an hearsay type of answer, that seems entirely improper in this proceeding.

Hearing Examiner Creel: I don't know what it is leading up to. With certain of the previous witnesses they have been asked what their understanding of the Plan was. I assume that is what he is leading up to. I will overrule the objection.

By the Witness:

A. I don't recall any specific instances of talking to a particular Brown Franchise dealer about the Plan.

By Mr. Timony:

Q. Have you talked to Brown Franchise dealers about the Plan?

Mr. Burke: Object; he just answered that.

Hearing Examiner Creel: He said he didn't recall any specific names of people he had had conversations with. But presumable he could answer he had had some, but didn't recall who they were. Overruled.

By the Witness:

A. I am sure I have, in the course of discussing our line with a particular dealer; a dealer who, for instance was a Brown Franchise dealer, this would almost have to come up. [fol. 282] As to his understanding of the Brown Franchise Plan, the witness said, it is a plan whereby a shoe retailer can secure certain specific services from the Brown Shoe Company, if he indicates a willingness to purchase shoes from them during the course of a year. A plan whereby he can receive merchandise and service, such as aid in helping him set up his books, and also display services. The small independent doesn't have too much money to spend on this type of thing, nor the time. I believe there is a plan whereby he can purchase rubber goods if he is on the Plan, for a certain specific saving, too. I imagine that display signs, window displays, store layouts, all come under this Plan.

According to his understanding, a retailer who goes on the Plan agrees to purchase shoes from the Brown Shoe Company. His company's prospects for selling shoes to the Brown Franchise dealers are poor, except for a particular specialty type shoe, which for some reason or other Brown might not be manufacturing. He can cite several instances. Several years ago, specifically 1955 and 1956, they had a chisel toe shoe, a brogue, which was very popular. Brown didn't carry it. He knows of specific instances where his company sold those shoes to Brown stores. At

the present time there is another particular style, a pointed, very, very pointed shoe. They call it the Pintoe, and Brown, as far as he knows, does not manufacture this shoe at this time. It is possible his company could be selling their stores this type of shoe. The witness knows of two instances where his company is selling them.

He knows of no instances where his company is selling their full line to a Brown Franchise dealer. They have sold shoes to Faflik's Shoe Store in Cleveland, Ohio. That is one of the stores to whom his company is selling the pointed shoes that he mentioned. They were selling Faflik's prior to 1956. There was a reduction in purchases by Faflik in 1956.

Leverenz has one particular indoor illuminated sign that it offers to its retail customers. That is the Calumet and Lake Line electric sign. Retailers may purchase it or they may also receive it when they buy 120 pairs of shoes from [fol. 283] the company. The company's cost is about \$12.00 or \$13.00. The company does not offer inventory forms and accounting assistance to their retailers. They do not offer any kind of insurance deals to their customers. They do provide customers with advertising counter cards, specifically mentioning the company's lines two times a year, in the Spring and Fall. That, and the electric sign he mentioned, are all his company offers them.

The witness knows of one particular instance of a shoe manufacturer who has recently gone out of business. Hiawatha Shoe Company, Red Wing, Minnesota. They made children's shoes. He is not sure in what price range. It was about 8 months ago.

Ninety percent of his company's customers are in independent retail outlets. It is becoming increasingly difficult to find independent retail outlets today. Every year it is more difficult. He attributes this first of all to the shift in business areas in the city which has brought about a change many times in the location of a shoe store from the downtown shoe store or a secondary shoe location to a shopping center. And because of the tremendous amount of money that is necessary for a store to go into business in a shopping center. It really takes a certain amount of time before a center becomes fully independent. A small retailer simply cannot get into these things; he

doesn't have the financial backing to take a store in the centers, and some of the larger manufacturers are in a position to provide the capital to either finance the stores directly on their own, or as company-owned, or as an independent to provide him with capital to set up a store. In other words, many stores are being closed in what formerly were business centers, and they are not being reopened under the same conditions as they were open for business under previous conditions.

In addition to the matter of change in business areas in cities, he said, stores either operating under International Merchants Service Plan, or Brown Franchise Plan don't provide us with the same type of opportunities for sales that a completely independent retailer does. We are [fol. 284] restricted by the agreements of the plans in question as to our ability to go in there and sell the man our complete line, which is, of course, what we want to do.

#### Cross-examination.

There is a line of Brown Shoes, Pedwin, and Sherbrook label also, that compete with their line of shoes. Other manufacturers' brands also compete with his company's shoes. A. S. Beck Division of Shoe Corporation of America do not. The Douglas brand does compete to a certain extent. Douglas is a little bit higher priced. The Leverenz retail structure begins at \$8.00. Douglas has some shoes at \$9.00 and \$10.00. The majority of the Leverenz shoes are at \$9.95. The witness would say his company would not compete as directly with Douglas, because they are a little bit higher.

As to whether the Pedwin line starts at \$10.95, the witness is not sure where it starts this season. He agreed they go from ten to \$12.95. As to whether the witness would classify Pedwin with the Douglas, outside of his company's price group, he said, the Pedwin has shoes below ten. That would make those shoes below \$10.95 competitive with his company's brand, and to an extent it would make the whole line competitive.

Flagg Bros. shoes compete with his company's line. They are of the lower price range. Flagg Bros. chief price is \$10.95. That would put them directly opposite his company's shoes. He regards the price factor as a

criteria in determining whether a line is competing. The price also has a certain relationship in the shoe business to the quality.

The Fortune brand of General Shoe is above the witness' line, but General has a lower end, the Davidson line, which actually goes a little below his company's line and then moves up. Fortune is in competition as there is an overlap there. Great Northern was a former division of International Shoe. Their price begins at below \$5.00. They range up through his company's prices. He would regard those as competitive.

[fol. 285] The Hardy brand is a little lower than the Flagg brand, and is about a dollar at retail net below Flagg so their shoes almost without exception would retail at \$8.95. It would catch the lower end of his company's line. As to the Jelko brand of John E. Lucy Company, the John E. Lucy brand is familiar to the witness. There again, there is an overlap. They begin at \$10.95.

The Thom McCann brand line of the Melville Shoe Company would be very competitive with his price line. The Pilgrim of Plymouth Shoe is competitive. He is acquainted with but doesn't run into it.

Leverenz shoes are not distributed in the New England area to any great extent. Their heaviest concentration of business is in the area immediately surrounding the Great Lakes, beginning with New York State east, and moving down through Ohio and Pennsylvania, and more heavily in Indiana and Illinois, Iowa, Minnesota, Nebraska and the Dakotas.

Thom McCann line is not sold to independent retailers. Hardy is not sold. Thom McCann is not sold, and Flagg Bros. is not. Those three are not.

The Craft brand of International would begin lower than his company's shoes, but would also be competitive. They would also have a lower range on the Club brand, too. That places it in the area of their shoes. He would say competitive in price and style-wise. The lines mentioned are competitors to Leverenz in terms of price and style, but Huth-James would be strictly price. The Huth-James style is not in the same market of customers as their shoes, which are for teen-age young men. Similarly, Huth-James would not be a competitor of Pedwin.



His company's present sales force of 20-25 is an increase over the 18 they had listed in Dun & Bradstreet a year ago. At that time Dun & Bradstreet indicated the company had 3,500 accounts. The witness stated that his figure of 3,000 given at the beginning of his testimony would be more accurate.

[fol. 286] His company also distributes its shoes on a make-up basis to a small extent, about 10 percent of its business. In one instance as to whether they sell their line to a chain store or mail order house, that would be a part of the 10 percent. This 10 percent takes into consideration everything but the sales to independent retailers. This may be wrong by a couple of percentage points, but it is close.

The witness didn't think it was correct that his company's sales volume increased in 1959 over the previous year. Without a doubt the dollar volume would be up because of the present price adjustments which went up. His company's total sales figure is approximately 3 million dollars. In his line of business he may or may not be advised of the dollar figures of his company's sales.

Selling a complete line is the sales objective of his salesmen in placing or getting a customer for their shoes. It is a normal sales practice in the shoe industry generally of the salesmen to have their complete line placed with a retail shoe outlet. It would not apply where a man was selling strictly a specialty type, hot item type line, but generally speaking, you would find that it would be the case. His company has a hot item, but he would not call it a hot item line. It is a complete line. From the standpoint of merchandising your shoes, he advocates doing it on a complete line basis.

A turnover in accounts where they lose an account for one reason or another, and perhaps gets new accounts is characteristic of the business. It could be when you get a new account, you frequently displace some other manufacturer's line of shoes in that particular store. And when you lose an account, it sometimes means that a manufacturer's salesman has been able to displace your line of shoes in that particular store.

He didn't know whether Eckland's Clothing Store in Minneapolis, Minnesota has replaced Leverenz line of

shoes with Pedwin. There are a variety of lines in that store. A loyalty to any particular line would be hard to distinguish. So far as he knows Leverenz still has [fol. 287] Modern Shoe Store in Wausau, Wisconsin as an account.

. . . . .

The witness was referred to Commission's Exhibit 152, a photostatic copy of his company's business records of the Winona Bootery, previously known as B & D Shoe Store. He guesses it changed its name at the time that it went on the Brown Franchise Plan. As far as he knows it was a change of ownership too. They were both elderly gentlemen, and ecided perhaps they had had enough of the shoe business.

Counsel for respondent called the witness' attention to Commission's Exhibit 153 and stated that the numbers on the righthand column under the heading of "Shipments" don't represent a total of the numbers on the lines opposite these total shipments, which are presumably yearly shipments. The witness said at one time his company posted its sales by the month, as can be seen on the Exhibit: November, \$397. That was the only posting, and consequently the only sale in 1953. They they made the change from posting monthly to bi-annually, so they posted the total in June, \$695.73, for the first six months of the year. The figure, \$1316, would be the total of the \$695.73, plus whatever it is, ~~six~~ hundred. There are some other figures not recorded here. That would also hold true for the other figures shown on the monthly basis of lesser amounts than the total on the right-hand side. His company did not sell this account shoes after May 1956. That is the total annual sales for the Meyers Shoe Store.

That explanation would also hold true for Commission's Exhibit 156. Commission's Exhibit 156, dealing with the Emerling Shoe Store at Hamburg, New York, indicates that they ceased being a substantial customer in the year 1954.

His company has its regular terms, 2 per cent, 30 days. Then a 5 per cent cash discount is available to retailers upon an additional seasonal purchase, six months, of 60 pairs of shoes or more. He doesn't think 60 pairs is

volume but you could consider it a volume discount. It [fol. 288] is a matter of their being able to realize a savings in processing, in packaging, in shipping larger orders as a result of that, and they pass the additional 3 per cent on to those dealers. It is an additional 3 per cent, not an additional 5 per cent.

Their make-up shoes do not go to chain stores in shopping centers, with one exception. That particular chain has stores in the southeast, mostly in Louisiana, Kentucky, and areas where his company is not doing any volume of business to speak of.

His company has an estimated 20 to 25 outlets for their shoes in the City of Milwaukee. This should be one of the heaviest concentrations of their outlets. They wish it were a little heavier. They have tried to devote a considerable amount of attention to their sales effort in this area.

His company is in the process of developing another outlet in the area of Winona, Minnesota when they lost the account that was a franchise account. He doesn't know what the state of development that outlet is in at the present time. When an account may be lost for the usual turn-over reasons that may occur in accounts, they expect their salesmen to develop another outlet in the particular area. If a store is already carrying a competing shoe to his company's line, it takes real skill for a salesman in selling that customer, to replace them.

The Fafik store in Cleveland, Ohio is currently a customer of his company as far as the pointed shoes are concerned. There are probably half a dozen Fafik stores. He is not including all of them. They sold shoes to just some of the stores of that group. His company has other outlets in the Cleveland area for their shoes. As to whether the Fox Shoe Store in Cleveland, Ohio carries some of their Calumet line, he was not acquainted with them.

As to whether his company advertises in any national magazines, they advertised twice in Esquire Magazine as of this last October. That is something new in the way of a program for them. They cannot go into it extensively because [fol. 289] of the tremendous amount of money involved, but did advertise twice in the Midwest edition of

Esquire. That was a new departure from his company's previous policy.

Redirect examination.

The cost of the two ads in Esquire Magazine ran \$474.50 apiece. His company did no other national advertising last year. There are other facts in addition to price that go into determining whether or not shoes compete with his company's shoes. Price must be a basic factor, in competition, but style would be a complementary factor to price. The witness would say a young male consumer, of some 20 years, would be looking first for style in a shoe. That consumer would purchase a \$10 shoe rather than a \$15 shoe in the same style. Young men, as opposed to the rest of humanity, are rather style conscious. Particular styles run in streaks of favor among them.

His company's retail price goes up to \$12.95. As to whether the Huth-James Company is in competition with his company's shoes, price-wise they are in competition, but style never meant as much to Huth-James as it does to his company. He doesn't think he should say Huth-James and Pedwin are not in competition. Price-wise they are in competition. Some shoes in the Pedwin line are approximately the same style as some shoes of Huth-James. He thinks it is common knowledge among shoe retailers and shoe manufacturers that in terms of style Huth-James does not have a highly styled line. He could be wrong, because he hasn't seen their new line.

At the most about 3 to 4 per cent of his company's business is in speciality shoes. That is a guess, as near as he can come to it.

Q. From your experience in the shoe industry, would you say it is generally true that a retail store which is going to change lines, will try to sell out all of the old stock first, and this means they will stop ordering from the manufacturer which supplied them in the past?

[fol. 290] Mr. Burke: Object to the form of the question. It calls for speculation, and doesn't talk about any particular situation.

Hearing Examiner Creel: I gather he is asking if it is

generally true in the shoe business. Is that your question?

Mr. Timony: Yes.

Hearing Examiner Creel: Overruled.

By the Witness:

A. I would say that is generally true.

His company does sell to a customer who has a chain of retail outlets, some of which are in shopping centers. The percentage of their over-all dollar sales in a year to that chain would not be more than 1 per cent. Conceivably it could be less.

The Pedwin line of shoes is a highly styled line. The witness was shown Commission's Exhibit 15, entitled United Men's Division, Brown Shoe, April 25, 1958, the suggested retail prices at the bottom of the exhibit. These suggested retail prices begin to meet his company's suggested retail prices, and then they advance to the top which is \$13.95, which his company's price range would fit in within the bounds of that suggested retail price list.

Recross-examination.

The heart of his company's line of shoes is presently at \$9.95 price. That means the greater percentage of their shoes carry that suggested retail price of \$9.95.

. . . . .

[fol. 291]

March 9, 1961

Counsel for the respondent stated for the record that, on the basis of a previous understanding with counsel supporting the complaint, the fact that the respondent's witnesses are not under subpoena will not be considered as a matter of argument.

ALVIN MUSGROVE, called as a witness for the Respondent, testified as follows:

### Direct examination.

The witness resides in Olney, Illinois. He has retail shoe stores at Olney and Mount Vernon, Illinois. Mount Vernon is 75 miles from the town he lives in. Both stores are under the Brown franchise program.

The size of Olney is 8500. There are 8 other locations in Olney which sell shoes. Two other family shoe stores and six shoe stocks in department stores and the like. One of the other shoe stores is on an International plan.

The sales area of the Olney store is not confined to the community of 8500. They would draw trade from quite a way. They would draw trade from towns located about 25 miles from Olney in each direction.

Mount Vernon is about 16,500. There are four family shoe stores there such as his store. A family shoe store has men's women's and children's shoes. There are 7 other places besides those 4 family shoe stores where [fol. 292] shoes are sold, so that would make 11 altogether. Two of the family shoe stores in Mount Vernon are under the International type of plan. The name of his store in Mount Vernon is the Musgrove Shoe Store. The witness has had that shoe store since August of 1952. It went on the Brown franchise program when they opened the store.

As to what encouraged the witness to go on the Brown franchise program with regard to that store, he said, I thought if I could have the bookkeeping system that was available to me, the fact that I couldn't be in the store all the time, would be down there one day a week at the very most and look it over, was one thing. The line of shoes that they represented was another thing. The line of shoes that I wanted that were also available primarily in that town were Brown Shoe Company lines. The other store in Olney was not already a Brown franchise store.

His Mount Vernon store now carries Naturalizer, Life Stride, Smartaires, Glamour Debs, Robinettes, Buster Brown, Robin Hood, Roblee, Pedwin and Hush Puppies. There are other lines in there such as canvas footwear and other footwear. They have B. F. Goodrich canvas footwear and Ball Band rubber footwear, waterproof footwear, galoshes and the like. They have Nite Aire and Nite Life



house slippers, and Acme cowboy boots and Wellington boots.

They have had a line of H. C. Godman shoes, in that town and they have had Heydays there. The reason for the discontinuance of the H. C. Godman shoes is that they simply did not get that kind of business. They were buying the arch-type shoes, and didn't acquire enough of that business for it to be profitable enough to handle them. On the Heyday line of shoes, he had them in Olney for years and the salesman wanted him to put them in Mount Vernon. The salesman had a small account in Mount Vernon, and when the witness put them in, with the understanding he would be the only one to have them, the other account continued to have them. They did not prove to be successful with the witness in that town. They did not prove to be important enough to compete with another [fol. 293] merchant that had those shoes. In other words, through his own business decision he eliminated both the Godman and the Heyday shoes.

Among the brands of shoes previously named by the witness, the Hush Puppy brand is not a Brown Shoe Company brand. Neither are Nite Aire house slippers, B. F. Goodrich shoes, Ball Band water proof shoes, Acme Cowboy boots and Wellingtons. Hush Puppy shoes is a line of men's dress oxford shoes in the same price range as the Pedwin shoes. He carries Goodrich and Ball Band shoes because he thinks they are the best line of shoes. He carries Ball Band rubber footwear because he thinks it is the best established best nationally advertised and best trade-accepted rubber footwear on the market. And by the same token he thinks the B. F. Goodrich has their P. F. —posture foundation canvas shoe, which is the best advertised and trade-accepted canvas shoe on the market. They are both available and they had both been established in his Olney store, and he could buy them by quantity discounts.

The witness doesn't think that U. S. brand Keds was more highly advertised than the other. He thinks P. F. has the finest brand of canvas shoes. Keds had never been in their town. He could have had them. When the salesman makes Olney, the witness talks to him in front of the store, but he has been very successful with P.F.'s.

When the witness went on the franchise program with his Mount Vernon store, the factor of record keeping or bookkeeping was an important part of his decision. He said the thing that helps him in operating a shoe store, and particularly at this time when he was operating a store 75 miles from his home, was to be able to see the number of pairs sold in every department, the inventory, the pairs that he had on hand, and in working out a buying guide where he wouldn't overbuy and still buy enough shoes to have at the right season. And that's what this system gave him. He had a monthly report made out each month on the store's operations. He could sit down and [fol. 294] study that and study how many shoes had been sold that month, how many pairs had been sold that year up to date. If it was in July he had a record of what was the total pairs in every department. And that was a big help to him in operating a store where he wasn't on the sales floor all the time.

Hearing Examiner Creel: Well, I don't understand why your manager couldn't keep that record independent of anybody's bookkeeping system. Couldn't he keep that record himself, make up his own forms? What's unique about the system that Brown had that you couldn't do yourself or couldn't make out yourself?

The Witness: Well, you need a little guidance in making out a monthly report. It isn't the average boy that you can pick up on the street and teach him the shoe business that can make out one of those monthly reports and show your net worth without some guidance. I can teach him to sell shoes, but I am no bookkeeper and I can't teach him to make out one of those monthly reports.

A fieldman of Brown Shoe Company would come by and show his manager how to make the reports out. And with that help, that enabled him to determine his buying program in regard to his Mount Vernon Store. Before he went on the franchise program at Olney he adopted part of a similar plan there. The store adopted just his pairs-sold record only. He did not keep an invoice register or a perpetual inventory. He did not make out a monthly report. He only kept the pairs sold.

As the owner of those two stores the witness handled the buying for both of them. The Olney store went on the

program on April 1, 1960. The witness has had his own store in Olney since 1938. That store was carrying the following lines of shoes when it went on the Brown franchise program: Florsheim, Freemans, Pedwins, Hush Puppies, Acmes, in men's shoes; Red Cross, Life Stride, Smartaires, Godman, Heydays, Glamour Debs and Robinettes in the women's division; Buster Brown and Robin Hood in children's shoes; in canvas footwear, B. F. Goodrich; rubber [fol. 295] footwear, Ball Band. He carried Nite Aires and Nite Life house slippers. He carried Wolverine work shoes and a line of Hush Puppy dress shoes for men. He carried some Endicott-Johnson work shoes and some Endicott-Johnson boys' work shoes.

The witness had dropped Red Cross shoes from his store since going on the Brown franchise program. As to why he did that, the witness said, I put in some Naturalizer shoes when I went on the franchise basis. I carried both in the same price range, Red Cross and Naturalizer, and it was my idea to carry both for a while until I decided which way to go, knowing that I couldn't profitably handle two lines forever in the same price range. It is too hard to merchandise two lines. But I had had Red Cross for years in Olney, and you don't drop a line of shoes just on the spur of the moment. But after we had them one season my sales people—I have three people in my Olney store besides myself. We discussed it, and it was their decision, along with mine—but mainly from their decision—that we go to Naturalizer shoes rather than to buy from Red Cross. They like the Naturalizer shoes, they thought they sold better and they chose to go that way. So when this Red Cross salesman came through last October or November for spring shoes I told him that I chose not to give him a spring order, that I was going for Naturalizer shoes, however, I would like to go ahead and special-order a few Red Cross shoes when I had the opportunity. I have done that. In November and December it was all right. But in January, when I special-ordered some Red Cross shoes, they stamped on my order, "No longer a franchise dealer and couldn't fill the order."

The witness had been a Red Cross dealer since 1938. Where they got the word "franchise" he doesn't know. But on the order they had a rubber stamp, "No longer a

Red Cross franchise dealer, unable to fill the order." He opened his store with those shoes in 1938. The term "franchise" in the shoe business is sometimes used as a sort of an alternative word for "customer". In this case of the Red Cross shoes he thinks he had a franchise with Red Cross shoes. He had a promise of the salesman that he wouldn't go up the street and place Red Cross shoes. If he had the witness would quit them. In a town of [fol. 296] 8500 he doesn't like to compete against another store that has the same brand shoe. As to whether that is perhaps the way the term "franchise" is used, the witness said, that's the way we term it. He did not have a written contract with the Red Cross shoe people. It was pretty much a gentlemen's agreement. In a town of 8500 if you buy a line of shoes a salesman is not going to go up the street and peddle it to a competitor. That seems to be customary in the shoe business.

As to whether the witness had made any changes in the other lines in his Olney store since it became a franchise store on April 1, he said he had discontinued most all of those Freeman shoes. They like the Roblee shoe better. They like the service end of the Roblee shoe better. He was not told he had to put in Roblees. This was a choice of his. They have had Roblee shoes in Mount Vernon for years. They like them. They were getting along well with them. They were not getting along too well with their Freeman line. They didn't think they were moving the shoe well enough. They were having trouble on delivery, on mail orders. They were getting back orders when they thought that Freeman stock should have been complete enough to fill their order. And they just didn't think they were merchandising the shoes as well as the Mount Vernon store was merchandising Roblee shoes. So that's why they changed.

Q. You stated in connection with your decision to discontinue ordering Red Cross and devoting emphasis to Naturalizer, that you couldn't merchandise two lines successfully in the same price line at the same time.

Mr. Rogel: I object to that, Your Honor, I don't remember that testimony.

Hearing Examiner Creel: Well, he said something very similar to that. Overruled.

A. In a store the size I operate—

By Mr. Burke:

Q. Is that the substance of what you said?

A. Yes. That's exactly right.

[fol. 297] In a store the size of the witness' store in Olney—and he has a pretty good established and pretty good volume store for a town of 8500 people—there's a limit of how many shoes you can sell in your top-grade shoe, which would be the Naturalizer on top-grade shoes. They are from \$10.95 to \$14.95. That's in your high-price shoes. You have only so many customers that will pay that price, and there's a limit as to how many shoes of that price you can carry. And sometimes the line is pretty small when you are trying to buy two lines of shoes. And they will overlap on shoes.

Salesmen come and call on you in a 2-month time. He will buy spring shoes from a shoe company for his store from October 1 to December 1. That's when your salesmen usually call on you to sell you spring shoes. Should he happen to buy Red Cross shoes the first of October and his Naturalizer salesman wouldn't happen to get here until the last of November, you might have a period of nearly 60 days elapse.

Regardless of notifications that you get on the styles you buy, you still are overlapping. You can buy nearly the same style shoe and not realize it. And then at the end the shoes come in and you say, "Gee, I wouldn't have needed those." You can't manage two lines of shoes in a store of his size, shoes nearly identical in price and styles, in catering to the same type customers.

The Naturalizer line of shoes is his highest price line of women's shoes.

Knowing what sizes of shoes to buy takes years of experience. He spent 9½ years with a chain shoe store in his town until he had enough nerve to go on his own. And you watch your stocks. They have certain sizes of shoes they buy. Quadruple A's you buy much more than B's. They know the heart sizes to buy in, and they know

where to buy two pair or a few. You just do that from experience. When you are buying shoes you also buy style and patterns and heel heights, in addition to sizes. The shoe business is a very competitive business. And they have so many different trims of shoes, bows on them, and different counters of shoes and different shaped [fol. 298] heels and shaped toes. One shoe you will sell in a style shoe, and you will buy it in narrower widths than you will an every-day shoe as a woman wants a little looser fit there. This would definitely influence the inventory as to the type shoes you carry. Your style shoes must be closed out each season. You can't carry over a high-fashion shoe for the second season. In an everyday fashion occasionally you can. You buy a little broader sizes in a staple shoe. And, of course, your pairs sold definitely would influence your inventory. If you don't sell a shoe you had better not have them in stock. You aren't going to make any money if you don't turn them.

If you carried two lines in the same price range in order to fit your customers' needs, as to whether that would have an effect on your inventory situation, the witness answered, if they are two lines that are entirely different there might be some excuse to carry both lines to fit your customers' needs. If the two lines are very similar he doubts if there would be an excuse to carry two lines of shoes. He doesn't think you would need two lines of shoes. He doesn't think you would need two lines of shoes to take care of your customers' needs.

The carrying of two lines in the same price range complicates the inventory situation very much. You might overlap patterns unintentionally. You might get two different style patent leather pumps for spring that were so nearly the same that you wouldn't need them, and you just don't balance out your stock, buying two lines of shoes. You can do it so much better if you have one line of shoes spread out before you. You have all the different shaped toes and heels. Suppose you are able to buy 500 pairs of shoes for a spring shipment and you are going to buy those in 25 patterns. You can pick out your 25 shoes better if you have got them all right here than if you buy 12 pairs from this line and maybe 60 days later buy 13 patterns from another line. When he talks about a differ-



ent line he is talking about a different manufacturer. Like Red Cross is a line of shoes with him in his store or Naturalizer in the franchise line, and they are both in the same price range.

[fol. 299] Hearing Examiner Creel: Won't one line have certain numbers that are distinctive, that won't be anything like another shoe of another line?

The Witness: Not very often. There is nothing to keep one company from going out and buying a shoe and copying it. They may have it for one season, but that's about all. In our business there's a lot of copying of shoes. They will all have shoes very similar.

As to whether it is an advantage to carry more than one line of the same price range and style, the witness said, my store I think you are better off with one line of shoes and concentrate on that one line and advertise that one line and carry more widths in that one line of shoes than divided up in two or three lines and not have an adequate stock of anything. And your turnover and your pairs sold would keep you from having an adequate stock if you carried more than one line of shoes in my stores. He is talking about his Olney and Mount Vernon stores in his experience.

The witness went on to say, we have got to have widths to fit people correctly. People don't come in and buy their kids and their wife a pair of shoes and take them home any more, as a rule. They come in and sit down and you fit their feet. And if you are concentrating on one line of shoes you can buy more widths in that one line of shoes than if you are buying two lines of shoes and are buying a few heart sizes in both of them. Heart sizes are the popular sizes.

I may not be very good at explaining this, but the shoe business—I have just been in it all my life. I have sold shoes since I was 19 years old. And some of those things you are with all the time you don't sit down and explain, but you have got turnover to consider in shoes.

You have got turnover to consider in shoes, and you just can't go out and buy more shoes than you can sell that season. We want 2-time turnover in our stock, and in some departments we need a 2½ time turnover. We need to turn our stock two and one-half times a year.

And if you are selling 300 pairs of shoes in one department, you sure can't go out and buy 500 pairs. And if [fol. 300] you are buying some two or three lines you just pretty soon have got a whole bunch of different patterns and widths that don't fit in. And you just can't merchandise that way. Your salesman can sell a pair of shoes if he has got a good pattern and he has got all sizes in that pattern or as many sizes as you can profitably stock for him to work with. That is what is meant by concentrating on a line. Heart sizes are the popular sizes in the lengths and widths. A women's line of shoes: Say the sizes would start at 4 to 10. Well, you are not going to sell as many 4's and 10's as you would in the middle where you have the majority of feet to fit in those sizes. And the same with widths. You sell wider widths down here in the smaller sizes. The heel size has something to do with the heart sizes also. You don't see a woman wearing a 10 size shoe, a great big woman, with a 3-inch heel. She will buy a lower heel. But the little lady, the small lady, will buy a high-heel shoe and get by with it all right. So you wouldn't have those big sizes in the high-heel shoes. You may buy one or two in your store for the woman that has to have it for an exceptional occasion.

Concentration on a line very definitely helps him as a merchant in meeting his customer demands in these areas he has just been talking about.

Hearing Examiner Creel: Don't you miss a lot of customers, though, that are sold on a particular brand if you don't have that brand?

The Witness: I would rather have one good brand and have good sizes in it than to have a few in two or three brands and not have enough to show any of them. That's the answer.

The selection of the brands of shoes that are carried in his two stores is the decision of the witness, entirely.

. . . . .

No one from Brown Shoe Company tells the witness what to buy. They do not tell him what not to buy. He said, you asked me if they tell you what lines not to buy. The [fol. 301] fieldman working in my stores will work the

turnovers. They will advise you and show you, from your figures, the shoes that do not turn over. They will work with you on the figures and the pairs on hand, and you can see whether the line is profitable or not. They never tell you you have to drop a line.

Hearing Examiner Creel: Are you aware that your agreement with Brown provides that you not carry competing lines?

The Witness: No, sir. They never told me that. I have got competing lines in my store.

Hearing Examiner Creel: Have you ever read your agreement?

The Witness: I don't have an agreement.

Hearing Examiner Creel: You don't have a franchise agreement?

The Witness: No.

By Mr. Burke:

Q. Did you ever sign any agreement?

A. No.

Hearing Examiner Creel: As I recall the testimony of the Brown people, some of the franchise dealers had agreements and some did not. Is that right?

Mr. Burke: That's right. And I believe—

Hearing Examiner Creel: And he is one of those that did not?

Mr. Burke: That's right. And I don't believe those agreements have been used for over 2 years.

Hearing Examiner Creel: Go ahead, sir.

The lines of shoes the witness carries are his own decision. In determining what lines to carry, he said if the line of shoes that he carries is selling well enough that it's making him money, he keeps the line of shoes in his stock. In other words, it's the performance of the line of shoes. If the figures of the pairs sold and the pairs in stock were not good enough, were not turning [fols. 302-304] well enough, he would discontinue the line of shoes.

The witness is not acquainted with the Huth-James line of men's and boy's shoes. He has seen it advertised. He has heard of them, but he doesn't know the names of the

shoes that they manufacture or sell. Their salesman never comes to see him.

He has carried a line of shoes manufactured by Leverenz. He does not still carry them. The shoes were not of the quality that his competing line that he had established in the store was. The workmanship was not as good. The trade acceptance was not as good. In other words, they did not move for him at a profit.

. . . . .

[fol. 305] As to whether there are any other retailers that handle the Brown line of shoes in the two cities where the witness has his stores, there are outlet stores in both towns. These stores buy cancellations and any odds and ends anyplace that they can buy them. They can buy them down here on Washington Avenue in St. Louis. And in those they get a lot of Brown Shoe Company products. But no place do they have them elsewhere in town where they advertise them under the names that they are known by.

The witness has never carried any Weyenberg shoes in either of his stores. No salesman has come around to see him about Weyenberg shoes that he remembers. They have lots of salesmen who do show them shoes and who try to sell them shoes.

He has carried Clinic shoes in his store for quite some time and still carries them. That's a nurse type shoe. It's a white shoe to sell to nurses. It is carried just in the Olney store. It is not carried in the Mount Vernon store because they have an account in that town. (Tr. 758) The witness has told the salesman that any time he didn't have an account down there he would like to have them. As to whether it would be to his benefit to carry Clinics if another store in town carries them, he said, we think it is unethical in towns of the size we are to try to steal a line of shoes from another store. We don't think it is good to both carry the same line of shoes. It would affect the performance of those shoes. A man can always run a special on his shoe, and you have got the same brand in your window at the regular price and it hurts you. We do not want the same brand of shoe elsewhere in town.

Q. Mr. Musgrove, in regard to continuing on the franchise program, are you under any requirement to continue, or what is the situation?

A. I can quit any time I choose.

Cross-examination.

The witness has had his Olney store since August of 1938. And that one became a Brown franchise store in 1960. The Mount Vernon store he opened in 1952 and he started that as a Brown franchise store.

[fol. 306] The Mount Vernon store when it was opened in August of 1952 was in a very small building, and they had what they called a ladies' and children's store. They operated that one for about 4 years, and then they were able to acquire a larger room and a better location, and then they went into a family operation, adding men's shoes. They opened up in the new building in November of 1957. They were in the old building about 5 years. November 1957 they went into the new building.

The brands the store carried while it was just a ladies' and children's shoe store were: Naturalizers, Life Stride, a line of H. C. Godman shoes, and Heydays; in children's shoes, Buster Brown and Robin Hood; back on those ladies' lines, the growing girl line or young miss lines were Glamour Debs and Robinettes; and, in the house slippers, Nite Aires and Nite Life.

The H. C. Godman Company is out of Columbus, Ohio. They have got a long line of ladies' shoes. Now, they have men's shoes and children's shoes, but for a long while it was a ladies' line. The witness carried the ladies' line in his stores. The price of the Godman line would run from \$7.99 to \$11.99. The Life Stride shoe was in that price range. Some of Godman's best shoes were about the same as Naturalizer's low price. Naturalizer will start their shoes at \$11.99 now, but back at that time they started a lot of them at \$10.99. He was talking about the Mount Vernon store. The witness carried both of the lines from 1952 to 1960. He pulled the Godman shoe out of Mount Vernon very recently. He had a few of them down there. He was in that store yesterday on the way over here, and some lady was wanting the Godman

shoe while he was in there, and he was wondering if he could send them to her. He has got the order right here: 8-AA.

It frequently occurs in the shoe business that they come in and ask for a specific make of shoe. In this case, his saleslady tried to sell her a different shoe and wasn't successful, and they ended up with her order to wait until he could send her the shoe. The witness agreed that it is safe [fol. 307] to say that at least some people have a brand preference in buying shoes. He carries the Godman brand under the name of Tarsal Tread. You can buy them under the name Hug Tight, Teen Travelers.

The witness did not receive any assistance from Brown in the way of a loan or financing at the time he opened his Mount Vernon store. He has never had a dollar from Brown Shoe Company. He has never had any financial help from Brown Shoe Company or anyone else.

The witness was asked whether he had, or now has, any other lines of shoes in the Mount Vernon store that conflict with the Brown lines in the sense that they are essentially the same price range, the same type of shoe? He said he had Heydays in Mount Vernon that were in the same price range with Naturalizers. He thought they made a little different type shoe than Naturalizers, but they were in the same price range. They closed out their last Heyday shoe at this sale that just ended in January. But as far as quitting buying them, they quit buying them about three seasons ago.

At the Mount Vernon store, other than Brown lines they have Hush Puppies in the leather line, and Acme. Acme makes a line of Wellington boots and cowboy boots for children as well as men. But in the women's and children's line the witness agreed that he is all Brown in those lines at the Mount Vernon store.

Hush Puppies are men's shoes in the same price range as Brown's Pedwin brand. He has had them in Mount Vernon for 4 years. The witness plans to continue that line as long as it sells good like it is now. He had testified it is much better now to do this sort of thing, i.e., not to have both Pedwin and Hush Puppy, so he must have some peculiar reason here for doing it. The reason is that they make a different kind of leather in the shoe. Hush Puppy



makes a shoe with genuine pigskin leather and Brown is not able to supply him with men's shoes made out of pigskin leather. As to whether he carries a complete Hush Puppy line or just pigskin numbers, he said as far as he knows that is their complete line. The Hush Puppy line is only pigskin shoes. Brown doesn't have shoes made out [fol. 308] of the same leather. To the average customer it will feel like the same leather, but it doesn't perform quite the same. It is not genuine pigskin leather.

When they put in Acmes, Brown had a Wellington boot. A Wellington boot is a boot without any last that comes up about 10 inches tall and you just slip into. It became popular in World War II as an Army aviator's flying boot. Now, Brown Shoe Company in their Pedwin line had a Wellington boot, but they are not in the boot business and they can't compete with a company that makes nothing but boots. He had had Acmes in Olney for years, and he put in Acmes down there. And they had never argued with him on Acme because all he has to do is show them the Acme boot.

As to whether he carries any full lines of shoes in Mount Vernon which duplicate or overlap or conflict with the Brown lines, the witness said, the Heyday shoe would conflict with certain shoes that Brown makes, and Acme would conflict to a certain extent. He thinks smart shoe men can tell the difference between Hush Puppies and the Pedwin shoe; and the Heydays. When he had them in that town they had a definite place for them. The witness understands "conflicting" lines to mean lines that they would sell to the same customer at the same approximate price. It would serve the same purpose in his store, represent the same type shoe, and sell to the same customer.

Brown Shoe Company in their Pedwin line would make a complete line of leather shoes. He carries the complete Pedwin line. They would also make in that same Pedwin line a good stock of brushed leather. It looks like suede; nappy leather that you would not put shoe polish on and shine it. There are two types of shoes. One is a shiny leather and the other one is a nappy leather. The nappy leather is a direct competitor of Hush Puppies. If someone else had Hush Puppies in Mount Vernon, another competitor had it, he would have to do a business with

Brown Shoe Company's Pedwin line of brushed leathers. He would have to compete against Hush Puppies with [fol. 309] Brown Shoe Company's brushed leather. In his way of thinking they are not of the same quality leather and are not the same leather. So he buys Hush Puppies. He had them all these years, and he continued to buy them. He will buy two-thirds as many Hush Puppies as he buys Pedwins. He buys about 9 different styles from Hush Puppy. They are all pigskin. They are made by the House of Kraus, which owns Wolverine Shoe Company.

In his Olney store, he did not buy conflicting patterns or lines. His principal line of women's shoes from 1938 up to 1960 was Red Cross. This was his highest priced shoe; his main advertised shoe. It was the prestige line in his store. Thirty-five percent of his total women's sales was accounted for by Red Cross.

Heydays and Life Stride are not in the same price class. It would be Haydays and Red Cross or Heydays and Naturalizer. They are up in the top price range in his store. He carried Heydays and Red Cross together for quite some time. Heyday was the first to come out with a different stitch shoe, a stitched-down shoe. They had a shoe Red Cross did not have. He didn't buy the same shoe from two different companies. Heyday did not make a fashion shoe. They only made a walking, low-heel-type shoe. Neither Life Stride nor Godman compete in the same price range with these two lines at all. They were under them.

Life Stride and Godman are in approximately the same price range. He has carried those two for a number of years. As to his reasons for that, he said, for 9½ years in my town I operated a chain shoe store that was owned by H. C. Godman Company. When I left that store I went out on my own and went ahead and bought their shoes. There were reasons for that. Their own store wasn't selling enough of them. I operated my own store for 3 years. I had the opportunity to go back and buy this chain shoe store out that I had just left 3 years ago, and I bought everything in the store except a box of stationery. I bought the business that I had established there for 9½ years. I went ahead with the same line of shoes. It's a profitable line of shoes. I have no intentions of closing

[fol. 310] that line of shoes out as long as it is making me money. I had Life Strides in my store the 3 years. I had a line of shoes from Brown Shoe Company comparable to life Stride. They didn't use that name back in 1938. But from 1938 to August 1941 I operated my own little shoe store on Federal Avenue with my lines. When I bought the Miller-Jones store, which was owned by H. C. Godman Company, I moved that stock of goods up on Main Street into the Miller-Jones room that they were in and kept my same lines.

I bought a higher fashioned shoe from Life Stride and bought a more staple shoe from Godman. The Godman business had been established in that store for 9½ years on those staple shoes. And they are the type of customers who do not like to change. They are the type of customer whose order I have here in my pocket, that don't like to change. And I think Life Stride had a better line of fashionable shoes. That all goes back to merchandising in a store. I think Life Stride is a little better in their high-fashion shoe. They both make high-fashion shoes.

During that 3- or 4-year period, and for perhaps a longer time, he was carrying four women's lines of shoes. His operation was profitable during this period. He found difficulty in managing inventory. This is one reason that he went to a franchise setup in his Olney store. His Mount Vernon store was being operated pretty easy on a franchise basis. They could sit down and know just how many to buy, and it seemed a lot easier down there on a franchise basis.

He still has about 4 lines in his Olney store. It is no different than it was before except he has dropped Red Cross and Heydays, but he still has Life Stride, Naturalizers, Godman, and a line of Smartaires. He still has 4 lines of shoes.

His operation in Olney is not much different than it has ever been, except he has concentrated on Naturalizer instead of Red Cross entirely and on Roblees instead of heavy on Freemans. He still has a few Freeman shoes in his store and buys a few pairs. He is buying their French toe shoe. He is not sure that Roblee even has it. [fol. 311] It is the same thing as with the Godman shoe. A French-toed shoe is a style an old man wants to buy. And

as long as Freeman is going to sell him that shoe he is going to go ahead with it. He wasn't interested enough to look whether Brown has a number, because he wanted to carry that Freeman shoe that that man has been buying off of him since 1938, and it's hard to change this man, and you buy a French-toed shoe from Freeman.

With respect to women's shoes again, the only outside brands he is carrying are H. C. Godman, and Clinic in the white nurse's shoe. That's the Juvenile Company. They call their white nurse's shoe Clinic, and they make a black shoe called Foot Thrills and he carried those, too. It is made like a Clinic shoe, but it is a black shoe. His reason for carrying that additional line is the good trade acceptance on Clinic shoes. It's advertised far more than any other shoe of that type in the country. It's advertised in all the nurses' magazines and things like that. There's a trade acceptance, and they give him stock service. They have got the shoes to back you up. Every time you order them you can get them. All of his white nurses' shoes are Clinic shoes. And there are two patterns of the loafer, one twelve-eighths heel, a ripple sole, a crepe sole, with a wedge heel, and an outside heel. That is six patterns. And you buy widths in them. You can buy widths in them. You buy sizes in them. You buy quads to C's, and you buy them up to 10's. You can't skip the width. The only way Clinic will sell you shoes is to put in a full range of sizes. He has the Brown Naturalizer line of white shoes in his Mount Vernon store, and they have similar shoes. But the nurses don't know them like they do Clinic shoes.

He bought the Naturalizer line for last spring's operation. Prior to that time he had tried a few Naturalizers out from time to time by bringing them up from the Mount Vernon store. He bought them in the fall of 1959 for the spring of 1960. He went on this franchise basis in the spring of 1960, at Olney. And he bought the shoes to go in when he sets his books up for a perpetual inventory. He bought both the Naturalizer and Red Cross. He tried to dovetail them together.

[fol. 312] As to when he first talked to the Brown people about making this store a Brown franchise store, the witness said, when you work with them all the time, like you do

in Mount Vernon, that thing exists all the time. They were always urging him to become a franchise store. They would like to have the Olney store as a franchise store. It is a profitable store. It makes them a good record. And "When are you going to put the Olney store on the franchise basis?" There was never any pressure put on me that I would have to put—Nothing was said to the witness about adopting the Naturalizer line in connection with becoming a Brown franchise store. He said, there were things said about the Naturalizer line but not in connection with being a Brown franchise store. Always a comparison. "Look at the Naturalizer operation in Mount Vernon. A very profitable operation." In a kidding way. "Why don't you get smart and put them in Olney?" Always suggesting that we put Naturalizer in Olney. And when I would buy Naturalizer shoes for the Mount Vernon store, "Don't you want to buy them for Olney, now that we have got them bought for Mount Vernon?"

The witness had Life Strides and Smartaires in Olney at the time. He still has Red Cross, Heydays, and Godmans. He has discontinued Heyday shoes in both stores because of performance. He wants that straight there. He had discontinued them by last April. Heyday shoes have slipped a great deal in his way of thinking, and they are out of his stores. As to what percentage of his women's sales in Olney were accounted for by Life Stride and Smartaires together, before he took on Naturalizer, that would be awfully hard for him to guess, and it would be purely a guess. He has figures that he could tell you how many pairs that he sells, but it would be hard to guess. Life Stride was just about as strong a line as the Red Cross line, about as many pairs sold. Godman about the same. Smartaires is a new line he is trying to work in, a lower-priced line than Life Strides. You have reasons for buying different lines of shoes. You just don't buy them because a salesman wants to sell them to you. Life Stride pairagewise is a little bit under his Red Cross, not [fol. 313] very much, and now he thinks, a little bit under his Naturalizers.

His testimony was that he tried Naturalizer for a season, in the spring of 1960. They decided to drop Red Cross

in October of 1960. His 3 salesmen that worked for him in his store and he talked it over, and they said, "We wish you would go all the way with Naturalizers. We are getting along better with them. We are getting better trade acceptance." He had built-up public acceptance for Red Cross. It was his intention to continue to have some Red Cross but they cut him off. He has sold Red Cross shoes in Olney for 20 years, since 1938. He opened up with Red Cross shoes, and you have got a lot of call on Red Cross shoes.

The men's lines he had just prior to becoming a Brown franchise store in Olney were Florsheim, Freeman, Pedwin, and Hush Puppy. Now he has Florsheim, a good stock of Roblee, and a small stock of Freeman, Pedwin, and Hush Puppy. Florsheim is a higher-priced shoe. The same considerations for Hush Puppy Would apply there as apply to the Mount Vernon operation. He carried them both for years. Freeman is the French-toe number that he is going ahead with now in that price range.

There were no changes in his children's line in Olney after becoming a Brown franchise store. He has had Buster Brown and Robin Hood since 1938. The witness was asked if there was an inconsistency in his testimony that it would be much better saleswise and inventory-wise not to have conflicting lines, and the fact that he carries three or four lines of women's shoes and three or four lines of men's shoes. He said, they are just not conflicting lines. The line of shoes all have their place in my store. The Pedwin and the Hush Puppy are conflicting if you want to get technical on the kind of leather. And I am going to argue that the Hush Puppy has the best leather over the Pedwin. Florsheim is higher than Roblee or Freeman. Your conflicting line there is Roblee and Freeman. And I stated that it was much easier to go ahead with that French-toed shoe with the old man that comes into my store than to go ahead with Roblee [fol. 314] and change lines on him. I am going ahead with that Freeman French-toed shoe. Now there is a conflicting line, you might say, but still that Freeman French-toed shoe only competes for style in two colors and mostly brown.

Now, on your other lines of shoes, I haven't quoted you



anything that conflicted. I told you I dropped Red Cross shoes last October with the hopes I could special-order a few pairs. Red Cross and Naturalizers are conflicting lines; yes, sir. But I dropped Red Cross shoes because my men like the Naturalizer shoes better. My Mount Vernon boy has always told me—He worked for me in Mount Vernon before he went to Olney; and he said, "Alvin, you would do better with Naturalizers." But my intention was to special-order Red Cross to hold a few customers. But I wasn't buying a whole stock.

I don't have conflicting lines. The only conflicting lines would be between Red Cross and Naturalizers. The shoes are similar, and I only bought one against the other. I only did it this one year. There is no place else that I have bought a conflicting line except, you might say, Freeman and Roblee, and I have tried to explain why there. There is no place else I have bought a conflicting line. The Buster Brown are the higher-priced shoes, and the Robin Hood are the cheaper shoes. And I am not buying conflicting lines. There would be some place in Life Stride and Godman shoes. As to whether Red Cross, Heydays, Life Stride and Goodman aren't overlapping in many ways, the witness said, not in Red Cross or Heydays particularly. Heyday makes a particular kind of shoe in the same price range as Red Cross. You might find a few of the shoes that are overlapping. When Heyday first came out with their shoe they were the first to build a shoe like that. It wasn't very long until everybody copied it to a certain extent. Regarding the testimony of the witness that it would be much better to deal with a single source of supply and take all of the shoes from that line, he said, that's the way they did in Mount Vernon. If you would go to the Mount Vernon records you would find there were very few conflicting lines in Mount Vernon. But in Olney he bought out the H. C. Godman store, called [fol. 315] "Miller-Jones," and those shoes were established. They were established to Olney people, who do not change brands of shoes easily, and he didn't think it is profitable to drop that line of shoes.

As to his understanding of the Brown franchise program, and what he must do to be a Brown franchise dealer, the witness said, I don't feel that I need to do any-

thing different than I have always done. I work with the fieldman when he comes through. He helps me work up a buying guide. I appreciate the news letters that you get from Brown Shoe Company, suggesting things that you already know but perhaps don't do. To be sure to clear your stock out good at a sales period. "Don't kid yourself. Let's get clean merchandise to start the next season." At this time of year you get letters stating, "Let's peak your stock for Easter business." We know that. We keep so busy sometimes that we don't sit down and do it. Maybe a letter from Brown, saying it is only so many weeks until Easter, and maybe you will stay a little bit longer on Saturday night and get that order in.

Q. I am directing your attention to the principal lines carried, the relation of the Brown program to the lines that are carried. What is your understanding there? Can you be a Brown franchise store if you don't carry any Brown shoes? I think that's pretty ridiculous. So we can disregard that. So to what extent do you have to go along with Brown in order to be a Brown franchise store?

A. I couldn't tell you to what extent, but I think the more Brown shoes you carry the more help your Brown fieldman can be to you. Suppose I was buying Red Cross shoes and Naturalizer shoes. Suppose I continued that and my operation was big enough to continue that. I don't think the Brown fieldman would be of much help in buying Red Cross shoes. I don't think he knows the line well enough to be of much help to me.

Q. Is it that the principal line of shoes should be Brown in each of the categories—men's, women's and children's?

A. Not if another line would make me more money. If you would see Clinic lines of shoes in my store, that's the [fol. 316] principal line of nurses' shoes. And I am not going to go to another brand of shoes in my Olney store instead of Clinic shoes.

Q. How far afield do you think you can go before you will cease being a Brown franchise store?

A. I can't answer that.

Q. It has never come up?

A. No.

As to what changes the witness was expected to make when he put his Olney store on the Brown franchise plan in 1960, he said, it was never discussed as any real changes to make. But I felt if we had the same lines as we had in Mount Vernon that it would work out better. If I was going to make any changes I should buy the same shoes as I bought in Mount Vernon. But they didn't come to me and say, "You have got to drop Red Cross shoes," or "You have got to drop Freeman shoes."

It was generally understood—I was never asked to drop any lines of shoes, but we were constantly talking about the job that we were doing in Mount Vernon on Naturalizers, which I didn't have in Olney, and Roblee, which I didn't have in Olney. When I would buy them. It was a salesman. It wasn't always the fieldman. It was a salesman that would sell me that line of thinking. "Why can't we put some of those in your Olney store?" He wanted the witness to take on the Naturalizer and Roblee. Then he would have the same lines in Olney as they had in Mount Vernon, which they had been very successful with there.

. . . . .

Hearing Examiner Creel: It is correct, is it, that you never entered into a written franchise agreement with Brown, either for your Mount Vernon or Olney stores?

The Witness: I can't remember of ever signing an agreement for the Mount Vernon store. But that's in 1952. But I can't remember signing it. And when we took the inventory of the Olney store last April and the fieldman was walking down the stairs to get into his car, I said, "Bill, haven't you got anything to sign?" And he said, [fol. 317] "It wouldn't be worth anything if you did sign it. If you would be happier, we can sign it. Otherwise just go ahead."

Hearing Examiner Creel: And you didn't sign?

The Witness: I did not sign.

I can't remember of ever reading an agreement when we opened up the Mount Vernon store.

The witness was asked whether it is better to disregard this conflicting line thing and pick numbers that you feel

will sell, whether they come from just a single manufacturer or four or five. He answered, I buy Acme boots because they specialize in boots only. They are the world's largest manufacturer of boots. Now, it's true that Brown Shoe Company makes one black Wellington boot and one brown Wellington boot where Acme would probably make six different patterns. They make nothing but Wellington boots Cowboy boot, and that's all I buy from them. I don't buy conflicting lines to Acme. The Acme man comes in and shows some or all of his boots, and I buy them. And then Brown comes in and shows me his boots, and I say, "No, I don't want them. I am buying Acme boots." Brown has got only one shoe they can show me. Brown Shoe Company's men's shoes. Their Pedwin shoes. That's it in that price range. In their brushed leather shoe, Hush Puppy. And he still has the Freeman French-toe shoe.

Q. And from a sales standpoint, then, you feel that you should buy the shoes that are going to sell in your store? Isn't that what motivates your buying? Whether it comes from one line or ten lines. Isn't that true?

A. It's got to be a profitable line for me. I am not going to buy from ten lines of shoes that make the same price range shoe. I am not going to buy your one line of shoes and buy one shoe out of it and then buy another shoe out of another line. I have been in this business since 1929, and you just can't do that. Now, if you will go out here and buy Acme's Cowboy boots, yes. That's a nationally advertised boot. I buy it. But just because a salesman comes in my store and shows me his line from a different company, I am not going to buy it. This may be [fol. 318] his best shoe, but I am not going to buy this one shoe from that one company just because it is his best shoe. I would go broke. I have got to pick out the line that has the best trade acceptance and covers the entire picture the best.

The Clinic has better trade acceptance than Brown's nurse's shoe by far. The Clinic specializes in nurses' shoes. It was established in his store before he ever had any Naturalizer shoes in the Olney store. He can't tell you how long Naturalizer's white line is. He has only two numbers in Mount Vernon. He has got seven numbers in

Olney. Clinics were established in his Olney store. Brown's line is not near as long. He knows they have two similar shoes to what he stocks in the Clinic line. He stocks seven shoes from Clinic, but Clinic probably stocks 20 patterns in the white Clinic shoe. He doesn't know how many Brown Shoe Company stocks.

The witness does not feel that in order to be a successful store he has to buy all of his shoes, men's, women's, and children's, from Brown, or from any one manufacturer. If you carry the Red Cross in the women's, the Buster Browns in the children's, and, Freeman's shoes in the men's, he doesn't think that you would take as much advantage of your fieldman coming around and helping you. He doesn't think you can do as good with your bookkeeping system. He doesn't think you can have as good a buying guide.

Counsel for the Commission said he was not talking about the franchise program, he was just talking about running a successful shoe store. The witness said, and I am trying to get over the idea that I can run a more successful shoe store with the franchise basis.

Q. But that isn't what I was asking. I was asking you if there is any reason why, in order to run a successful shoe store, you should buy each of the different lines in a family shoe store from the same manufacturer.

A. I think that I can get more advantage from a fieldman. I can get more advantages in a buying guide by buying from the same manufacturer if the lines of shoes have the same trade acceptance and are equal in value in my store.

[fols. 319-320] Q. I know that you can get more use out of the fieldman because he can work on all your lines. But aside from that, I am talking about from your sales standpoint, from being able to advertise and sell in your market. Is there any reason why you should concentrate on Brown or International or any other and buy all of their shoes?

A. The only reason is that I think I can run a better store by buying from the one company and having the fieldman work with me. Your question doesn't make sense with me, with what I am trying to say. Why did I go on

the franchise basis if I can run it just as well by buying from Red Cross and buying from Buster Brown and buying from Freeman? You are asking me a thing that I just changed from, and I changed because—The record will tell you why. You asked me why I changed. Because I can have more advantage of the fieldman working with me. I can control my inventory better. I can have this monthly report that I can sit down and study at the end of the month. It just all comes to me as proof of the operation at Mount Vernon since 1952 as the easiest operation.

Q. Is it your understanding, then, in order to have the Brown serviceman, that you would take on the Brown line?

A. No. But I am sure that I can get more advantage of the Brown man if I would concentrate. It was not my idea to drop Red Cross shoes.

The witness carried the Leverenz line in the Olney store, about 3 years ago. He made one buy of about 5 styles and one buy of about 15 to 16 pairs of a stock. That was before he became a Brown franchise store there.

The witness has no competition that he knows of in Brown lines in Mount Vernon. As to the other stores, there might be a few Risque shoes in the Brownie Shoe Store. It is a line of Brown Shoe Company, but he does not carry them.

. . . . .

[fol. 321] Redirect examination.

This Godman shoe, compared to Life Stride, might have a little longer line of shoes, a wider variety of shoes, from a style standpoint. Constructionwise there is not much difference. The longer line would be on the conservative order. They have more patterns than Life Strides of a conservative order. Life Stride is more a fashion type.

When the witness went to the franchise program in Olney, he was not asked to drop any particular line. But for these years they have had two very profitable lines of shoes in Mount Vernon, Roblee and Naturalizer. Each time that the witness would buy from the salesman, he would like to sell them to the witness in Olney. The witness



was not asked to drop any line of shoes at any particular time. The purchase of Roblee or Naturalizer was not a requirement in order to go on the franchise program.

The Clinic shoe is a professional women's shoe, to go with a white uniform, white collar. They are all white. He stocks 7 styles of Clinic shoes in Olney. He does not stock any of the Naturalizer's professional women's white shoes in Olney. That being the case, Clinic does not conflict with Naturalizer as far as his stocking of those shoes because he doesn't buy any Naturalizer white shoes. He is concentrating on the best line of white-duty shoes, as Clinics are known in the country.

[fol. 322] The Hush Puppy has a particular suede-type leather finish on the outside of the shoe. Pedwin has some styles that have a similarity to that in a brushed-leather type. He does not carry the brushed leather in the Pedwin while you are carrying the brushed leather in Hush Puppy. So he does not duplicate in that area. He buys brushed-leathers only from Hush Puppy and does not look at them from Pedwin. So there is no conflict.

Hearing Examiner Creel: You said you were not required to take on additional lines when you became a franchise-plan account in Olney.

The Witness: I was never asked to take them on.

Hearing Examiner Creel: What did you understand you had to do to become a franchise-plan account at that place?

The Witness: I understood from the past experience that if a franchise was going to help me any it would help me more if I had those two lines of shoes—Roblee and Naturalizer.

Hearing Examiner Creel: What I am trying to get at is this: If you didn't understand that you had to do anything to become a franchise-plan account, why didn't you become one long before and get the benefits?

The Witness: I knew that wouldn't work out much better. I could have more advantage with the fieldman if I took on those two lines of shoes. I also know that in a store of mine that I can't buy two conflicting lines of shoes like Red Cross and Naturalizer and Freeman and Roblee. I just knew that I could do better if I went on their lines of shoes and could work with the fieldman, and I wasn't

ready to try to work in both of them. From 1952 to 1960, when we operated in Mount Vernon, I was convinced that I was ready to go on the franchise basis.

Hearing Examiner Creel: And take on the lines whether you were required to or not?

The Witness: Yes, sir. I was going to take them on in time at least.

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[fol. 323] WILLIAM B. HOWARD, called as a witness for the Respondent, testified as follows:

Direct examination.

The witness resides at Hillsboro, Illinois. He has a shoe store there named Howard's, of which he is the proprietor. He has had that shoe store since March 14, 1960. It is on the Brown franchise program and went on March 14, 1960. He opened under the plan. This is the witness' first experience in the shoe business as an owner. He has been in the shoe business before, working for other stores.

. . . . .

The witness went on the franchise program because he had been out of the shoe business 10½ or 11 years, and he knew this is a very fast changing business. So he felt that he needed the guidance, going back in and starting out. The particular feature of the guidance which was important to him was their bookkeeping system. It's a unit-control system, under which you have a daily picture of every category of shoes that you carry in the store. You have the profit picture at the end of the month. It's just a much easier way for an independent merchant to operate and really know where he is going at all times.

Hillsboro proper is a community of 4,276. The witness considers that his store caters to a much larger area than the residents of Hillsboro. He said we reach down into small communities approximately 20 to 30 miles away. They don't draw too well west because Litchfield is 10 miles west and it's a bigger town. They are direct competition with Hillsboro merchants.

In Hillsboro the witness is Chairman of the Retail Merchants' Association, resident of the Chamber of Commerce, and he is a Director of the Seven Cities Industrial Council. There are 10 other shoe outlets or shoe stores in Hillsboro that sell shoes. The witness is the only family shoe store. Directly across the street is a department store, but they do carry men's, women's, children's footwear complete. In the department store they really have a family operation.

[fol. 324] In his store the witness carries Air Step, Life Stride, Smartaire, Robinettes, and Buskins, Roblee and Pedwin in the men's; a service shoe from Portage which is Weyenberg. He also carries a line of work shoes. He has Robin Hood's, a few Buster Browns, Godman's and Natural Bridge lines of arch shoes, Daniel Green house slippers, Nite Life house slippers and B. F. Goodrich in canvas and rubber footwear. He did have Williams, but took them out this season because the shoes didn't fit, and because he had the line for 13 years, and the salesman went across the street and established an account with the same shoe 70 feet from his front door. The witness will not buy the same line in a town of that size.

Natural Bridge would, to a certain extent, conflict with Air Step. They fall in the same price range. There is a difference as to style or pattern. They are two different manufacturers. The Air Step has the arch shoe but the Natural Bridge has a much broader line of arch shoes. He does not carry the Air Step arch shoe, but does carry the Natural Bridge arch shoe. Air Step and Natural Bridge do not conflict the way he is carrying them.

Godman's are a cheaper line of arch type shoe. They would be in the same type of shoe as Natural Bridge, in a different price range though. They would fall more in the price range of the Life Stride line. Godman's shoes that he has are conservative pumps and ties (oxfords). Life Stride is a higher style line. The particular type of shoe that he carries in Godman is an older woman's shoe.

The witness does not carry any Leverenz shoes. The Leverenz salesman does not come to see him. He is not familiar with any shoes made by Huth-James. He has never seen the Huth-James salesman. In regard to the

Deb Shoe Company, a salesman of that company has never called on him. He thinks the Freeman salesman he has called on him. He did not buy any Freeman shoes from him. He didn't feel that he had any need for it.

As to a professional woman's type of shoe, nurse type, the witness has Air Step. He has attempted to purchase [fol. 325] Juvenile but they turned him down. He doesn't remember the entire part of the letter but it was to the effect that they weren't interested in opening an account in Hillsboro at the time. They did not have one there and there still isn't one.

At this time Respondent's Exhibit 1 was marked for identification and shown to the witness. The witness identified it as a communication he received from the Juvenile shoe corporation in regard to the subject matter he has just testified to. It is a copy of the original letter that the witness received from them.

. . . . .

Respondent's Exhibit 1 was received in evidence over objection on the grounds of lack of relevancy.

The witness has heard nothing from Juvenile Shoe Company since this letter. He has had no further communication from them. He has not communicated with them since that time. He needed a line of shoes and so he bought one.

The witness carries a particular line or brand of shoes because it has sales appeal and public acceptance and makes money. If the shoes sell and you get repeat business, that is what they have to depend on in a small community. They have got to have the right merchandise, and if a line does that for them that's what they want. He thinks that is the determinative factor. He makes his own decisions as to the choice of lines and styles that he buys. As to whether he carries any overlap of one line to another in brands or styles, the witness said, well, price probably, but he doesn't feel that they are conflicting in types of shoes, in their categories.

The witness was asked to explain what other criteria or what other factors are involved in this question of whether a line conflicts with another line. He said you could have two lines of shoes that sold for the same price,

but they would appeal to a different man or woman. You can't class a mamma-type shoe, an older woman's shoe, into the high type picture even though they might retail at the same price. In his store Godman and Natural Bridge would be classified mamma-type shoes. Air Step is [fol. 326] a pretty broad line. A high percentage of the witness' shoes appeal more to the middle-age woman. He doesn't use the Air Step line to appeal to the teenage or young professional woman wanting a high style. The lines he carries for that area are Life Stride or Smartaire. When he is carrying a line he caters to what he hopes will be a particular group of customers.

In all lines they will stock certain patterns in depth. You can't stock every number, the fringe merchandise, real high style stuff that perhaps they get little opportunity to sell. You are not going to put that in, in the depth that you would of a shoe that appeals to the woman for every day. In other words, the shoe that they have the most calls for, they stock those in depth. The one that isn't what you call "fashion business".

"Stocking in depth", means running your sizes from 4 to 10AAA. He usually runs his AAA, AA, B and C widths. In style shoes he wouldn't carry but AA and B's and then maybe in one or two numbers add the triple. These are two instances, one of stocking in depth, and the other, of not stocking in depth. The purpose of stocking in depth is that you can fit more customers. The ones he stocks in depth are the shoes that the fashions don't change as fast. You can't buy a real high style shoe and put it in from 4's to 10's in all widths—you have got about a 5 month selling season—and except to get rid of all of them and not take a bunch of markdowns. If you carried everything in depth you would have an outrageous inventory and it wouldn't give you any turnover whatsoever. Your mark downs would eat you up. The type of turnover that he tries to achieve is a 2 to  $2\frac{1}{4}$  times turnover. That means turning his stock over 2 and  $\frac{1}{4}$  times a year. They are not achieving that average in all departments. But in their overall picture he thinks they are accomplishing that. That is achieved by controlling your inventory. They have to watch what sizes are selling. You can't buy every-

thing in depth. They double up on the heart sizes that they know are pretty certain will sell. They are not going to get that turnover on fours or size 10's. The turn you would get would be on 7, 7½ or 8, speaking of women's shoes.

[fol. 327] As to whether carrying one line with no overlaps on another line, helps in the inventory problem, the witness said, it is much easier to control if you use just one line. If you were trying to merchandise one price range in the same classification of shoes, same styles, you would be running yourself silly trying to deal with 3 or 4 companies. On an operation of his size especially, he could only handle one company.

As to the meaning of the term "line concentration", the witness spoke of Air Step, for instance, where they cover a range of heel heights, colors and styles and patterns. You can do a better job buying that line, or whatever line it might be, if you have got the entire picture in front of you at one time, because they just don't make one shoe or heel height. They have got a large selection. And you would get all confused trying to remember 6 or 8 weeks later when another salesman came in with another line, what type of shoe you had bought. In the categories and types of shoes, the witness sticks with one line and concentrates on the line. He thinks it does a better job. This concentrating on one line very definitely helps them control their inventory.

The witness mentioned that they carried B. F. Goodrich rubber footwear. This is because it was established in the store when he purchased the store. It has a good reputation. There is not a better line, so he just continued with the line.

As a part of the franchise program he subscribes to the group fire insurance that is provided under the program. As to the reason, they think it's a savings with the method that they have of handling that, at the end of each month you have a perpetual inventory figure. In case you would have a fire loss you just couldn't be very far off on it. And it still is cheaper for the simple fact that it is actually insured for the amount of that month because you peak your inventory. You might have \$20,000 at one time of



the season, a \$20,000 inventory, whereas at your low ebb, closing out, you might be down \$10,000. So if you were going to cover with an individual insurance concern you would have to cover for \$20,000 to take care of the peak [fol. 328] periods, whereas this is flexible. That is tied in with his record keeping.

He does not take the window trim service that is provided on the franchise program. He has not used the architectural service. The witness was financed in the acquisition of this store by Brown. He utilizes the services of the fieldmen on the Brown franchise program. He finds those services of value. The witness said, he will sit down with you and especially about the first six months—I never had much bookkeeping experience, and he worked very closely with me on these monthly profit and loss statements which I found rather complicated and he was there to help me at the end of every month to close out and then he works with you, analyzing turnover and what departments you have got to watch a little closer, do a little more promoting on, build up. In other words, he gives the witness some counsel in regard to his merchandising.

The witness is under no restriction or limitation whatsoever in regard to whether he continues on the program. He could leave the program any time.

Q. Do you continue on the program because of the benefits or is it because of the shoes that you use?

Mr. Rogal: I object to that question, Your Honor. It is highly leading.

Hearing Examiner Creel: Yes, it is. Of course, if he would ask him now he would have those things in mind. I will sustain it. You can rephrase it.

By Mr. Burke:

Q. Looking on the franchise program solely because of the benefits that are offered by the various matters that you—

Mr. Rogal: I am sorry to be interrupting you, but the question seems to be the same.

Hearing Examiner Creel: Well, it seems to me it is perfectly obvious it is not for that sole reason. He wouldn't buy the shoes if he couldn't sell them.

[fol. 329] Mr. Burke: I appreciate that, and if counsel for the Government would so stipulate I think it would move along, because I think that there has been an implication and the nature of the complaint is directed to the fact that for some reason these people are on this program and they buy Brown shoes because of these benefits. And it is obvious and it is so elementary that a businessman is in the business of selling shoes, and the only reason he uses a certain type of brand of shoes is because they have customer acceptance and he can profitably do business.

Hearing Examiner Creel: Of course, other brands have customer acceptance, too.

Mr. Burke: That's right.

Hearing Examiner Creel: But a particular thing might cause a retailer to take on one line rather than another, but in both cases he would expect to resell the product or he wouldn't buy it.

Mr. Burke: That's right.

Hearing Examiner Creel: And it seems to me it is so obvious it doesn't require any testimony on the subject.

The lines of shoes that the witness is carrying in his store are the result of his own personal choice. If a shoe is not performing he would discontinue it and sell it and get rid of it real fast. He would do that in regard to any shoe that he carries regardless of brand or who it belonged to. It certainly doesn't make any money setting on the shelf. He is going to do it to the Godman line as soon as he gets back. He sold 24 pairs; since March 14, 1960. It's not profitable to carry those when you are carrying better than 220 pairs of their shoes. His decision is they are going out. His store doesn't have that class of trade. They get their business on Natural Bridge which is a higher price line. It is too cheap a shoe for them. If the line is not right they don't continue it.

The witness doesn't have a written contract arrangement with Brown. He has a note in connection with the [fol. 330] loan, but that's all. The note is payable over a

term. He has a monthly payment schedule over the loan period.

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### Cross-examination.

The following brands of shoes were carried by the former owner when the witness bought the store: Air Step, Life Stride, Natural Bridge and Godman's, ladies' shoes, and Perkies by Grinnell. He has Perkies in there at the present time. The former owner had Crosby Square, Roblee, a scattering of Curtis men's shoes and Pedwins. And in the children's, Buster Brown and Robin Hood. He had some Red Wing in men's work shoes. And Portage, which is Weyenberg, which the witness continued with. It was not a Brown franchise store before the witness bought it.

[fol. 331] The witness did not discontinue the Red Wing work shoe. The line had been taken out by the previous owner.

The store was substantially a Brown store in lines at the time the witness took it over. He didn't continue to carry the Portage work and service shoe. He put it out on sale when they cleared the store. They sold it down to the shelf, and he cleared out the stock the best he could. He didn't put in a line of work shoes for 3 months, looking for something he thought would be a better line. But he found out that there was none, so he went back and bought from them. He decided to drop them and then reconsidered it. There is something in the Brown line that compares with the Portage work and service shoe. As to whether Brown can fill his needs in that respect, he said, Brown on their work shoes, doesn't have as broad a line. He doesn't know how many numbers they have. He doesn't really know what the Brown line consists of.

The witness is going to drop the Godman shoe and expand the Natural Bridge line. Within a few months that will be the only line that he has that conflicts with a Brown line. Buskin is a line of growing girl's flats and sports. They could fit in with the Rebinette line to a certain extent. The prices overlap there. Robinette doesn't go as low in price as they do, but Buskin will come up

into the Robinette range. He feels it is necessary to carry Buskin's and Robinettes because of the price structure. He is not buying the higher priced Buskin line. He is buying the lower price to come up and meet with Robinette and carry on.

Air Step has similar numbers in price and style to the Natural Bridge arch. There are about the same price range. He carries Natural Bridge rather than carrying the full Air Step line, because what he carries in Natural Bridge is the older ladies' staple type shoe, pump and oxford style. They have a broader line than Air Step in that particular type of shoe. In the little higher style shoe Air Step has got them beat in sales appeal and quality and price. The price structure is the same, but for the dollar value received it's a far better line. Another [fol. 332] reason he would prefer getting Air Step's where he can is that they are this close to St. Louis, while Natural Bridge is at Lynchburg, Virginia. Shipping costs are a terrific factor in a small business today. The witness pays the delivery cost himself. He thinks Air Step is better quality, has better fitting qualities. With the dollar value received for their customer, whom they are interested in because they have to have return business, he thinks the Air Step gives them the most for their dollar, as opposed to the Natural Bridge. But the Natural Bridge in the area that he buys is broader, and he would say that their quality is comparable, every bit as good as Air Step, in that area of the line. The witness means by styles, not considering colors. Natural Bridge is a broader line in that arch support field. Some of his Air Steps are shipped from St. Louis. In their area, too, he thinks they have a certain amount of sales appeal to the public because there are an awful lot of people in the area who make their living off the Brown Shoe Company. They have that plant at Litchfield.

The witness first started looking into the store he bought, 8 years ago. He gave it a good deal of thought. He couldn't buy it right as long as the owner was living. When he passed away in December the witness bought it in March from the estate.

He first heard of the Brown franchise program 8 or 10

years ago. He had never had any personal contact with it, working in a Brown franchise store. He just knew that there were Brown franchise stores. He contacted Brown approximately 8 years ago with respect to this store becoming a Brown franchise store. At that time the store was for sale, the owner was failing. He wrote Brown and told them that he was interested in buying it and that he wanted to talk to them, and he was down there on one occasion and talked to someone. But he could never get the owner to any where near a reasonable figure so he just dropped the matter. In fact, the owner sold it once, and then rebought it.

At the time he contacted Brown, about the only thing he did was request information about the franchise plan, what they had to offer, just more or less to familiarize himself with at at that time. There was no discussion [fol. 333] of borrowing money from Brown at that time. That first came up the latter part of 1959. The estate was constantly coming down on the figure and they started getting closer together. Then he came to St. Louis and talked to Brown about some financial assistance. At that time he talked to Tom Curtis of the franchise division. He mentioned the fact that he was going to have to have some financial assistance but never went into detail on the thing. Curtis just told the witness that he would have to get closer to final arrangements, whether he could buy it or not before they could go any further with the thing. The store was being operated all this time.

When the estate accepted his offer, the witness called Mr. Pinnick, the Brown fieldman. He did not have assurance from Mr. Pinnick that he would be able to get money from Brown at that time. That's why he had to get a figure to go to Brown with. He couldn't just go to them and say he didn't know what he was going to have to pay for it. He borrowed \$7,000 from Brown. The witness has approximately \$7,800 to \$8,000 of his own in the business, separate from Brown. The terms of his note from Brown were that he would pay them \$150 a month until paid. He has a payment schedule. The rate of interest he believes is 6 percent, but he's not sure. The \$150 does not include interest.

Q. When did you formally agree to be a Brown franchise dealer?

A. I believe that would have been on probably March 11 or 12, that I definitely knew that I was getting the store; and then I came right down and made the loans and everything.

Hearing Examiner Creel: Well, I don't quite understand this. Brown certainly had to understand that you were going to be on it before they made the loan.

The Witness: There was absolutely nothing said.

By Mr. Rogal:

Q. About going on the Brown franchise program?

A. That's right.

Q. They did not connect the two together?

A. Well, I can't say what they connected together.

[fol. 334] Q. But in their representations to you they did not connect the two together?

A. No, they didn't.

Q. Was there any talk about the lines that you were going to carry in the new store?

A. At that time?

Q. Yes. Or with Pinnick prior to the purchase, or anything like that.

A. Yes. One day—it was just about the time we closed the deal—Bill asked me what lines I was going to carry in each price category; and I told him at that time that I thought I would stay with the same lines in the store because, after all, the store was 31 years old and had a reputation, so why give all that up.

Q. By that did you mean you were going to carry the—did you tell him you were going to continue to carry Crosby Square and Buskin?

A. No. I definitely made up my mind I wasn't going to carry Crosby Squares.

Q. How about Portage? Did you tell him you were going to continue the Portage line?

A. Frankly, I don't think work shoes lines were discussed at all.

Q. Was Williams at all?



A. Well, like I say, I had made a decision that I was going to go right along with the lines that were in there and feel things out for myself. And I did make two buys from Williams.

Q. Did you tell Brown or any of their people that you were going to continue to carry Williams?

A. Yes.

Q. You mean you actually told them that in so many words?

A. I didn't say, "I am going to carry Williams' line." I said, "I am going to carry the existing lines in the store."

Hearing Examiner Creel: And he knew what they were?

The Witness: Oh, yes. Sure.

The witness was very familiar with the operation of the store at the time he bought it. As to whether he had access to their records and profit and loss statements or things of that nature he said he didn't even want them, he didn't ask for them. They were available but the business had been run down. The owner had been failing for 4 years, but only bad the last 2, and they just had one girl [fol. 335] in there operating the business and they weren't keeping up the store the way they should. At the time the witness took over the principal women's line in the store was Air Step. In children's, it was Buster Brown. In men's it would be about 50-50 between Roblee and Crosby Square. They are in the same price range.

The order the witness sent to Juvenile Shoe Corporation was for only 2 different numbers. He had looked at the line at the shoe show in April here in St. Louis. He would guess there was somewhere around 17 or 18 numbers in the Clinic line. The reason he ordered only 2 numbers was that he didn't want to buy the thing in the dark. What he really wanted was to have their salesman call on him. He thought he could get to operating on this. It is a pump and a tie and a little tapered toe, which is the biggest thing in their line. Referring to the letter, Respondent's Exhibit 1, the witness said he was ordering 32 pairs of shoes. He was ordering one pair in each of these sizes from 6 to 9 in AA and 5 to 9 in B's, and in two styles.

He thinks No. 308 is the pump. If he sold his size 7½ AA the first day he got it he wouldn't be able to service a subsequent customer in that size. As to whether, in shoe companies of this type, that could possibly have had anything to do with Juvenile's decision not to ship this order, the witness said, he didn't see why. He thinks you will find a lot of your big department stores right in the city, huge volumes—there's a lot of shoes that they don't buy but only one of a size. Now that's not true on everything and, as he stated before, this was a request. He just wanted to get these shoes in his store and he was requesting the salesman to come in and show him the line, and he wanted to buy that line. He could get by with 2 shoes, but these were the 2 basic numbers and the fast turnover that you will sell the technician and the nurse. They have a hospital at Hillsboro. These are the styles that they will use. The two styles.

In the letter, to which Respondent's Exhibit 1 is a reply, the witness asked them to send a salesman to him when he was in the territory. The witness does not have that letter. Respondent's Exhibit 1 came from the witness' [fol. 336] files, but he does not have a copy of his letter to Juvenile. But he saved this letter.

The following question and answer appearing at page 822 of the record was read to the witness:

Q. How many companies can you properly deal with?

A. I would say on an operation of my size especially I could only handle one.

Asked to explain the answer a little more, the witness said he used the wrong word there because he buys from several companies. By that he meant when you are merchandising any particular line—say Air Step—if he has an open-to-buy 300 pairs (here the witness was interrupted by Counsel for the Commission saying that he didn't understand the term "open-to-buy"). The witness said that gets into this bookkeeping system which they have with the franchise division. To maintain this turnover that he is talking about for profitable operation there are months that they have to peak. They have to have their

inventories peaked with Easter, and then they will cut them back. So you have certain months that you have more pairage to buy in order to peak at a certain time than at others. That is what they call an open-to-buy. The turnover and the volume of business and the profit structure that you are shooting for allows you at that time to purchase 300 pairs of shoes in that line, in that category.

As to how that relates to his answer the witness said, to the fact that, how could he buy from 2 or 3 or 4 companies when we are talking about 300 pairs of shoes. That's why he said, "in my size operation." He said "company" there when I should have said "line of any one particular company."

Q. Then it is my understanding that in your size operation there would be nothing wrong with buying, say, all your men's shoes from one company and all your women's shoes from another company just as long as you didn't conflict and buy two lines in each category from two different companies. Is that true?

A. If any one company had everything that you needed in that price category, it would be all right to buy from them. But that's why we go into Natural Bridge in [fol. 337] the same price structure as Air Step, because Air Step doesn't cover that type of shoe as well as Natural Bridge does. So you can call it "conflicting" if you want, but really it isn't. There is no conflict of types there.

The witness carries the life insurance that is sponsored by the franchise program, and the casualty insurance on his stock. As to whether he carries this because it is cheaper, the witness said that's not the entire reason. It is a fact that if he burned out, if he had a policy with a local insurance concern there would be a lot of fighting and scrambling over how much stock was in there for a settlement. Under this settlement with this franchise bookkeeping system that they have, when he closes out the month of February, which they have closed out, they know exactly how many pairs of shoes and how much they cost, and that is entered on there, and the insurance company insures you for that amount. There is no question about

it. He does not think that any independent merchant he has ever worked with has this type of bookkeeping system. They don't go to that extent. You wouldn't find an independent merchant that would show you a profit-and-loss statement at the end of the month. They don't know where they are going.

Assuming you have the bookkeeping system, you cannot get the same kind of insurance from another company, based on your actual inventory, because he inquired. They cover you for a year's period or a 6-month period, not a fluctuating inventory. They cover you for a flat amount. As to how other companies that he inquired about would determine his loss if he were burned out, he imagined what they would do would be to take your retail receipts—he did not find out. He just found out that he couldn't get it, and this was a cheaper means of doing it, by getting a fluctuating inventory. It's a cheaper rate. In other words, if he peaks at \$25,000 in inventory, he is not going to carry \$25,000 twelve months out of the year. But if he buys from an insurance company locally he is going to insure for \$20,000 for 6 months or a year in order to cover it at its peak, when maybe half of the year he is going to be down to only \$12,000 or \$13,000 worth of inventory.

[fol. 338] The rate varies with his inventory under this program. Under his present program it is based on how many thousand dollars of inventory he has in this month. He pays them in advance. You don't pay them each month. He thinks he paid his for a year. And then to his understanding it is adjusted. As to whether it is just a flat rate for a year, the witness hasn't been there a year since he took the insurance and he can't answer that. All he knows is that he talked to local insurance agents about it and they told him that was the cheapest means of insuring, so he did it. As to whether he said that this was an important consideration or benefit of the Brown franchise program, the witness said, I think it's a benefit.

To the witness' knowledge, his loan from Brown does not become due if he ceases being a Brown franchise dealer. This schedule is set up for a certain period of time. It was never discussed.

### Redirect examination.

His loan is now down to \$2,100.

In regard to the letter he received from Juvenile as to whether he had requested a salesman from Juvenile to see him, the witness went to their show room down here in April, 1960, and his wife and he looked at the line. They couldn't get much satisfaction up there. There was just a salesman in the show room, so that is why he went direct to the company, thinking that he could get the line, because they walked out of there without no satisfaction whatever. And at that time he asked the man to send him a salesman, but he never heard from them. And in the meantime he needed the shoe, or a shoe of that type.

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LEE VIERA, called as a witness for the respondent, testified as follows:

### Direct examination.

The witness resides in Salem, Illinois and is in a retail shoe store business there. Salem is between 6500 and 6800 people. There are two other family shoe stores be- [fol. 339] sides himself, and four other department stores or men's clothing stores, which sells shoes in his community, making a total of 7 including himself. He estimates his store draws customers from a territory 25 to 30 miles north and east and southeast. The witness has been in the retail shoe business since November 23, 1943. He started out in Jacksonville, Illinois for 6 months, Robinson, Illinois for 11 years, and the balance of the time in Salem, Illinois. The name of his shoe store is Doug's Shoes, Inc. He is on the Brown franchise program. He went on the program as Doug's Shoes on January 20, 1960. The store had previously been on the franchise program. It is a family shoe store.

The lines of shoes he carries are, in his ladies line, Air Steps, Life Strides, Smartaires, Town & Country, Heydays, Sandler of Boston, Clinic, Heel Hugger made by Dunn & McCarthy, and Miller's Foot Defenders. That is not I. Miller. In his children's line he has Buster Brown and

Robin Hood; in the men's lines, Hobblees and Pedwins. For canvas and rubber footwear he carries U. S. Rubber and Ball Band of Mishawaka. He also has Daniel Green's house slippers and Nite Aires, Wellco and Nite Life. They are all house slippers. He carries Ruskings, the same as Mr. Howard does.

The witness does not stock any Freeman shoes. He has a working agreement with the salesman where he special-orders them. He has Weinbrenner shoes for men in his work shoe line. He does not have Weyenberg and a salesman from Weyenberg has never called on him. His store does not carry any Huth-James shoes. A salesman from Huth-James has never called on him, to his knowledge. He does not carry the Leverenz shoe. A salesman from Leverenz calls upon him regularly. He has never bought any shoes from him. He has looked at the Leverenz line and felt that the Pedwin line gives him as much and maybe a little more. That's the reason he didn't buy Leverenz. It's the same price scale as Pedwin.

The witness carries the line of shoes that sells best in his store. He said, we want customer satisfaction. And [fol. 340] the lines that we feel for the dollar received and the dollar spent, that we want to give our customers. We have a small town and we must have those customers repeat with us.

The witness has heard the term "line concentration." It means better inventory, controlling your stock. A tighter line concentration. If he buys from too many different companies it will mean overlapping the patterns, no depth, a lot of styles to show, nothing to show on what you have. By having line concentration it gives you more depth in the shoes that you are carrying.

As to what he means by the terms "depth" or "no depth," he said, take Air Step as an example. They cover a broad field. You can buy high heels with your 4-inch walking heel down to what we call our mama-type shoe. And by concentrating on one line it is much easier to see the whole program in front of you, buy the patterns that you think are what you would like to sell in your store and buy some depth there. I mean buy sizes, buy in good size range; maybe not in all shoes. But also considerable



pairage. I think more customers are lost in not having sizes than in not having styles.

By having a depth of pattern, that connotes having sufficient sizes to handle the customers. The effect of having no depth of pattern but a wide variety of styles is that you are having a style show instead of selling shoes. You are selling shoes with no shoes to back up what you are selling. The effect on the customer is that they walk in and ask for a certain pattern and if you don't have their size they lose faith in you. And you must have that size in your stock. Not at all times, but you should have it there to where they can buy it.

As to how many shoes the witness has in his most popular size and in his most popular shoes at the beginning of a season, he would have maybe two and possibly three in your 7½ AA, your B's, your 7 doubles, which is the main extent of your selling. That's in the heart sizes. That is two or three pairs of that size of shoe. The total that you would stock may be 32 to 35 pairs of that particular [fol. 341] shoe. That's just one style in that one number, say a high patent leather. Shoes come in more than one style and in many colors. That is a factor when you are stocking shoes. This time of year you would probably buy a lot more of a patent leather shoe than you would a light green or a light pink, which is a fringe item in their business, and you buy in short-run sizes on those particular colors.

Inventory is a critical problem in shoe merchandising. In a town of 6500 to 6800 people you have a certain number of pairs that can be sold in that area, and stock control is very important. By overbuying you can't survive. The witness tries to achieve at least a 2.5 turnover on inventory. He does not always achieve that in all of his various styles. When he does not have proper turnover he tries to promote the shoe in advertising or maybe put it out as a special sale item. If the shoe is not moving, he definitely would not buy it the next season or resize it. That is what you call a performance of a shoe, whether a shoe sells or not.

"Resizing" is one thing most every shoeman does possibly every Saturday night on his better shoes that are moving. They send in an order sheet to the company on

sizes to be restocked for their stores. That is a reordering of shoes, replenishing your stock. The witness replenishes the stock one a week on his basic patterns; not on all shoes. He is able to do that just on in-stock items only. An in-stock item is a shoe that is carried by a shoe company in stock in their factory. All shoes are not carried in-stock. The other type of shoe contrasted with in-stock shoes is called a makeup shoe. You are not able to resize on makeup shoes. On some items resizing would be a seasonal order situation. On your basic shoes you probably resize each week, throughout the year pretty generally. That resizing operation helps maintain your depth of patterns in the patterns that you like to keep in your stock.

The witness buys the various Brown brands of shoes that he mentioned because they are highly successful in his community, well accepted, and they do make money for him. He has not been required to buy those shoes in [fol. 342] any way while he is under the Brown franchise program. That is a matter of his own choice. If those shoes did not perform he would not continue to buy them. He would feel free to let them go.

He has heard the term "hot-shotting" used in shoe merchandising. That means picking out maybe one single shoe out of a different line and playing that one shoe, trying to find the fastest number in that shoe or the best seller. Based on his experience in the retail shoe merchandising he would say that is not a sound way of shoe merchandising. The reason is because you are tying yourself up to too many companies, and unless that shoe is awfully good you have lost money. It's like a horse race, like trying to pick a winner. By buying from too many companies you get into stock control inventory problem, overlapping of patterns, maybe buying the shoe that you see in another line which compares very favorably to the one you have already bought. A likely result of that is that one of the two shoes will sell and one won't. Then that shoe goes on sale and you have lost money. This is the reason why it is not an advisable practice. The witness does not follow the practice of hot-shotting.

His store handles U. S. Rubber and Ball Band rubber goods and footwear. He buys most of his men's from U. S. Rubber and most of his ladies' from Ball Band. In

his purchasing of these rubber goods he deals directly with the salesman from the company, a different salesman from each company. He chose two different rubber companies in this type of footwear because both companies were in the store when he purchased the store. They are both highly advertised and both good, and the witness has just more or less split the business between them. Their prices are competitive.

The witness thinks the general public knowing the brand-name through advertising, aids in the sale of shoes. Brand-name advertising is a help to a retailer, especially in those lines. The witness does not stock only nationally advertised products, he buys other products that are not nationally advertised. Preselling of brand names is a help to the merchant.

[fol. 343] He has never been told by any representative of Brown Shoe Company what shoes he should buy or what shoes he shouldn't buy. He makes that decision of his own free will. The things about the franchise program that made him want to participate in it are the services rendered to him through the bookkeeping system, the help of their field representative in helping him make his buying guides, and also Brown's product. He means he is definitely sold on Air Step, Life Strides, Smartaires, Roblees, and Pedwins, and so on. A buying guide is the same thing as an open-to-buy. A buying guide is to give them X number of pairs, based on performance of the store and dollars and cents that they should buy for that particular season coming up or that particular season they are in. That is the same as an open-to-buy, which he calls a buying guide. This is in connection with restocking for peaking his inventory. It helps him on his restocking. It shows him where to buy and how much to buy. The fieldman helps him prepare that. It is a guide to the witness in the amount of his purchases. He makes the decision himself as to the amount of the purchases. In preparing the buying guide he is not in any way limited or restricted as to what lines of shoes he should buy. That is his own decision. If he wanted to buy other brands of shoes than Brown, he has never been told that he shouldn't do so.

The witness carries Clinics. He has never carried the

Lazy Bones children's shoes of Juvenile. He has never had a salesman call on him in regard to that.

Four or five years ago they had some Deb shoes in the Salem store. They discontinued those because the performance was not up to what they wanted. Mr. Inges, their general supervisor, felt that the shoes were not performing well, and he took them out of all the stores. The witness is referring to when he worked for McCoy Shoe Stores. At that time the McCoy Shoe Stores were a group of stores in Illinois owned by Mr. Dick McCoy a corporation, Dick McCoy was president. Mr. Inges was the general supervisor. Those are the stores that the witness referred to as having previously worked for in Jacksonville and Robinson. They were on the franchise program the whole time he worked for them, and at the time the Deb shoes had been carried by the store.

The witness uses the window service under the franchise program on the women's window in his store, but not the men's. He has had occasion to use the architectural service. He carries the fire and group life insurance. The fire insurance is on the fixtures and stock. He does not have that on his building. He has a local concern on his building.

There is no restriction or requirement whatsoever that the witness knows of, that he continue on the franchise program. He could quit it at any time.

. . . . .

[fol. 345] Cross-examination.

Salem is about 6500 or 6600 to be exact. It is especially a farming town, and the oil industry, a Texas refinery is there. Brown Shoe Company has a plant there which employs about 600 people.

The witness was a manager for McCoy's up until about January of 1960, at which time he bought a store from McCoy's. Now it's named Doug's Shoes. They have a corporation. He is a stockholder in the corporation. He did not receive any financial aid from Brown when he bought this store.

In his women's line the witness mentioned Town &

Country, Heydays, Sandler of Boston, Clinics, Heel Hug-gers, Foot Defenders and Buskins. He had Life Stride, Air Step and Smartaire from Brown.

[fol. 346] He also testified it is desirable to concentrate because of inventory problems and that sort of thing. Asked to explain why he had so many lines of women's shoes, the witness said he carried Buskins only in the summer for their bare-type shoe, barefoot sandals. He does not buy the line in the wintertime whatsoever—he buys his Buskins because Brown and the other companies do not furnish him with a sandal-type, open-type shoe for summer, and that line he buys from them only in the summertime. He does not buy from Buskin in the fall of the year at all. These other lines have always been in the store. They have carried them in there for years, they are accepted, and he sees no reason why he should change.

Asked how he got around this inventory difficulty that he said he obviated by concentrating, the witness said he knows exactly what he wants to buy in each line from these particular companies. It is not necessarily just a few numbers. He is mainly a style store, and he needs these style-type shoes. He buys what he needs in each line, maybe 5 or 6 patterns, 7 in some instances, maybe more, not necessarily in each one of these. He can't tell you how many he buys from each one. By the term "needs" the witness means, "to satisfy his customers' needs, what they desire."

This differs from the practice of hot-shotting, which to the witness is buying one or two patterns and trying to buy the right shoe. He doesn't do that. He is buying and stocking Town & Country in 4 different patterns. He doesn't have quite as much as depth in them as he would have in other lines. Town & Country is one of his shorter lines. He carries those particular 4 numbers from Town & Country, basically because they were in the store when he bought the store. The name of Town & Country means something to the town of Salem, and it's a well accepted shoe. These 4 patterns are high-style shoes, in the flat line, growing girls' flats. He doesn't buy their dress shoes. These are not the same patterns that were in the store when he bought it. He has changed that. Whether he plans to continue to buy Town & Coun-

try in 4 or 5 different styles depends upon the performance. As long as they sell he is going to do [fol. 347] that. Town & Country are in the price range of \$8.99 to \$10.99, in their flat line. Their dress shoes are higher priced. That price range does not correspond with any Brown line he has in his store. If he bought Life Stride flats it would probably correspond with them.

He has 3 patterns of Heydays which he is contemplating dropping because the shoe has lost much of its customer acceptance. He has reordered that since he took over the store. He has been carrying that both as manager and as owner for about 5 years. He always carried just a limited number of patterns. He found that profitable to do or he would not have continued. The Heydays are an in-between heel. It's not exactly a flat and it's not a high heel. It's a ten-eighths heel. It is more of a walking type shoe, something your mother might like. It certainly wouldn't be a high-fashion shoe.

As to Sandler of Boston, they make a wonderful line of hand-sewn moccasins, a girls' type soft shoe and dress flats. He stocks a few of both their hand-sewn loafers and their dress flats. Brown has something equivalent to this Sandler shoe in about the same price range. That would possibly be in the Life Stride. Combining the two categories of Sandlers, he carries 8 patterns in his store.

In the Clinic line the witness carries their nurses' type shoe only. He has 5 different patterns.

The Heel Hugger he would compare to Godman shoes that were discussed today sometime. It is a lace-type oxford, walking oxford, for an elderly lady. He carries 4 patterns in that shoe. Life Stride makes a tie or lace shoe, so does Air Step. Air Step is not the same price range. It is much higher. Brown does not make a shoe which competes in price and style with Heel Huggers. Not unless you would go into a higher price.

Miller Foot Defenders is an orthopedic-type shoe for a lady, priced above anything Brown Shoe Company has.

The term "makeup" does not mean a shoe that has your own name on it. A makeup shoe is a shoe that is made [fol. 348] with no stock behind it at the company. It's made strictly in that pattern for the stores. The witness buys some makeup shoes from all companies. He can't re-



order or fill in sizes without making 36 pairs, which would take another 3 months on a makeup basis, which would probably be out of style by that time. He imagines all companies offer makeup shoes. Brown Shoe Company does.

On his purchases of U. S. Rubber goods, the witness remits to Brown Shoe Company. He has been buying U. S. Rubber goods ever since he has been in business for himself. When he was in the Salem store of McCoy's, they also bought U. S. Rubber goods through Brown. When he was with McCoy's, that store remitted to the home office and then they paid all the bills from there. As to whether there is any advantage to him as a Brown franchise dealer with respect to the U. S. Rubber purchases, he said, I get my 2 percent, just like I do from Ball Brand. No extra whatsoever. There is no advantage with respect to dating order. The same dating from both companies.

The witness testified that he felt that it was of value to him if the brand names of shoes were nationally advertised.

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[fol. 349] W. C. MACDONALD, called as a witness for the respondent, testified as follows:

**Direct examination.**

The witness resides at Toledo, Ohio. He is employed by Brown Shoe Company as a field representative and is going on his fifth year in that capacity. Before that he was a fieldman for International Shoe Company for 3½ years, under the Merchant's Service Plan. Prior to that he was in retailing, men's, women's and children's shoes.

His territory as a Brown fieldman covers eastern Michigan and the State of Ohio. There are 57 franchised stores in that territory.

As a field representative the witness assists the merchants with their retailing and merchandising problems. He assists them in the preparation of their open-to-buy forms and guides, to the end that they may realize a fair profit on the capital invested. All open-to-buys are based

on a man's capital and physical space in the store. All his open-to-buy requirements are set, based on previous performance and capital and experience. The witness works out an open-to-buy that will fit into the dealer's capital requirements and to meet his performance requirements also. This occurs twice a year. He is not able to do this personally with all the franchised stores in his territory. They make it a point to contact their stores twice a year minimum, and some of them they contact many times more. This would be at the stores' request, on their being placed recently on the program. They need assistance in record systems, book-keeping system and the stock control records. Originally the witness set up the records, accounting system, for the dealer and then returns in a month, or two, three, if necessary, to help him get out his monthly report. After the witness has done that with a franchise dealer for a period of time, the dealer does it himself from there on out. The witness visits more frequently those franchise dealers who are most recently on the program.

[fol. 350] Another area the witness covers is stock analysis, analyzing lines to see what is performing satisfactorily and profitably for the dealer. They make an analysis, for instance, of the ladies' shoes in the dress category by size and width, and they can point out a man what he is buying wrong. He is buying either too many odd sizes, either starting them too low, 4 or 4½, and running them too far, to 9½ or 10. Maybe he is buying the wrong width or buying too many "quads" or maybe not enough, whatever the analysis reflects. The stock analysis would not have a reflection on lines, but they can analyze that and break it down further by lines. That is done in the perpetual inventory, or monthly report. The purpose of that is to give the dealer the performance outlined. From that they make up his open-to-buy. The dealer determines what he is going to buy. With his assistance, the fieldmen determines the trend of the store, whether to make an increase or a decrease, and the open-to-buy by pairs is set up on the same basis. The dealer absolutely makes that determination.

In reference to the stock analysis and open-to-buy, the

witness also has the occasion to analyze the dealer's inventory situation at the same time. Inventory is very important factor in retail merchandising because the dealer can be carrying too much or too little inventory. The effect of too much inventory would create a situation of low turn-over of merchandise and in many cases it would create a financial problem of being unable to pay his bills. If it is turning over too fast, it would show he is not buying rapidly enough. Stock analysis reveals the "turn" that the dealer is getting on his stock, and whether he is buying wrong, or whether he is buying his stock in properly balanced fashion in sizes and widths, and not too many end sizes, and buying them right in the heart sizes. That is what has been referred to as carrying a pattern in depth. That should not be done on all shoes that a man carries in his store. You pick out the patterns and styles that you are going to concentrate on, and you should carry them in size and depth.

Now, to explain a little further that term "depth." If you are not going to stock and concentrate, you are naturally going to spread yourself out over a large area. You have so many shoes that you are in a position to buy, which means that you are going to spread yourself thin. In other words, over a period of two years you would buy maybe 15 pairs of shoes per style. And that would mean that starting at about 6½ to 9 you would buy one pair of each in a AA width, in a B width you would start with a 5½ or 6, and you would buy that in each size through 9. Then if a lady comes in and buys one pair of 7½B or 7½A, the merchant is out of a size. The time for fill-in now would be from 10 days to two weeks. That means the merchant would miss innumerable sales by spreading it out that thin. If he concentrates on lines and stocks them in depth in the heart or popular sizes, the dealer would be able to buy that particular shoe or size, maybe 3 or 4 pairs to a size, which would give him ample time to replace the merchandise in the event one or two pairs in that size were sold. That is resizing your stock, to reorder it for the purpose of filling it in. If a dealer has that backed up in depth he is safe because he can place a reorder and

without 10 days he will have that size to replenish his stock and keep stock on hand at all times, not miss a sale. That's the function of what the witness has described as stocking in depth, and concentration.

When you talk about concentration, it doesn't relate to any particular line. Whatever the dealer decides he is going to concentrate on should be handled in the same fashion, regardless of lines. The effect of concentration from a merchandising standpoint is a saving of sales and an increasing of profit. If the dealer doesn't have the shoe size and the customer walks out, he misses out on the sale. In other words, it's the making of a sale and the saving of a sale in the sense that you don't lose it. In being able to concentrate on a line you are able to carry a greater number of sizes and you eliminate the overlap that occurs with other lines. If you buy too many lines and patterns, you will find a similarity of style in all lines, so if you are not on a concentration program you are going to buy overlapping patterns. And if you buy your overlapping [fol. 352] patterns in other lines, then it will result in one thing—a duplication in styles and an overstocking of your inventory. You would be limited in the number of sizes you could carry if you are not on concentration, that's why concentration program is a sales saver.

The witness thinks the practical limitation in not stocking more than one line would be the dealer's financial ability to go overboard on these things. The witness counsels with a dealer in regard to his capital situation and his inventory turnover. He makes recommendations to the dealer in this regard. For instance, if a dealer is inclined to buy too many shoes after they have made the analysis and the open-to-buy and they have gone over it with him, they can point out to him where he is overbuying in connection with his capital and they would recommend that he not overbuy. That is as to the overall picture. The witness very often makes recommendations with respect to performance of lines. He cited an instance of a store in Michigan. A man bought the store with the idea—it was primarily a men's store before he bought it, and he thought along the lines of making this a men's and children's store and accordingly he put in Buster Brown and Robin Hood shoes. After two sea-

sons and analyzing the stock and counseling with him, these two lines, Buster Brown and Robin Hood, were not performing. So they tried promotional methods and advertising to get the lines to perform. And upon the occasion of his next visit to the store, the witness recommended to the dealer that he discontinue the two lines because they were not performing and not making a profit. This store had operated on a limited basis on children's shoes, but the dealer wanted to go all out and increase it.

Most of the stores in the witness' territory are family-type operations. His counseling is in respect to the store's entire operation in regard to the sale of shoes. As to whether the witness makes a stock analysis and advises the dealer for Brown lines only or for other lines, the witness said the records reveal the performance of all lines in that man's store. The witness is acquainted with the [fol. 353] performance of the Brown lines in the stores in his territory. He has information with regard to styles and patterns of Brown brands. The Company periodically sends out information on the best sellers. He gets performance information in regard to particular styles of Brown shoes. That information aids him very materially in his work as a field representative. The experience that he develops in his efforts with these franchised stores in his territory in regard to the performance of Brown brand shoes in these stores aids him in his fieldman's work. Dealers naturally want to stock the best numbers and good sellers, and with the information he gets collectively from the territory, he is in position to pass that information on to the dealer. That is an important function of his service as a fieldman. He cannot do that with respect to other brands, manufacturers brands of shoes. He has no knowledge of how they are performing.

The witness does not have inquiries made to him by the dealers as to what lines of shoes they should stock. He just deals with the dealer in regard to the administering of this record system and the stock analysis and the open-to-buy schedule, that's his primary duty. As to whether from that the witness has the occasion to advise the dealer on any purchasing plans that the dealer might have in the future, he said only to the extent that they might have the open-to-buy, which is projected on a 6-

month basis. After it is once projected and once explained to the dealer, it is entirely up to the dealer as to what he may want to do. Another Brown salesman calls on him to sell him shoes. The witness is not selling shoes. The witness is just counseling the dealer on his merchandising program and that phase of the business. He does not call on any accounts other than franchised accounts. Dealers in his territory do not ask him what brands or lines of shoes they should buy. He does not have the occasion to suggest lines or brands of shoes to them. The witness limits his function in his territory to assisting the merchant in his planning, based on the use of the records that he keeps under the Brown franchise program. He has never told a dealer he can't buy a line of shoes. It's entirely up to the dealers.

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[fol. 354] Cross-examination.

There has been no change in the Brown franchise program, or the witness' instructions with respect to it, since he first went on the program. As to instructions with regard to conflicting lines in a Brown franchise store, he has no instructions with respect to conflicting lines. They advise and analyze the line situation and make a complete picture to the dealer. The dealer makes the decision on what he wants to do. The witness is urged to encourage the Brown franchise store to eliminate conflicting lines only if there is an overlapping situation. The comparison is shown to the dealer between an overlap and a complication of the Brown line and someone else's. The dealer makes the decision on what line he wants to keep. All determination of lines carried by the dealer is left entirely up to the dealer. The witness has no instructions to urge that the dealer discontinue carrying conflicting lines.

Hearing Examiner Creel: I don't know whether you answered that right. He asked you if you had ever received any. You say you have none now.

The Witness: I have no instructions. Naturally at one time we did observe any outside lines that might be in



the store, but we were not instructed to tell the dealer to eliminate those lines.

[fol. 355] By Mr. Rogal:

Q. Are you familiar with this type of report form?

A. Yes, sir.

Hearing Examiner Creel: What are you referring to, Mr. Rogal?

Mr. Rogal: Excuse me. This is Commission's Exhibit 31-A.

By Mr. Rogal:

Q. And on the bottom of this, underlined and in full caps, it says, "To encourage concentration on B. S.——"

A. Brown Shoe Company.

Q. "—B. S. C. lines and elimination of conflicting lines."

A. Naturally, we try to sell our lines. That's only normal.

Q. Yes. But with respect to the rest, "And elimination of conflicting lines," do you consider that an instruction?

A. If so, I have never carried it out. I have never asked my dealers to discontinue lines.

Some of the witness' 57 Brown franchise dealers carry a principal line other than the line of the Brown Shoe Company. There is more than one, he can't tell all the names of those stores. He knows Farrar's Shoe Store in Clyde, Ohio, and also the Carlisle Shoe Store in Sandusky, Ohio. The Farrar Shoe Store at Clyde are handling Red Cross Women's shoes. They have the Air Step Brown women's line. They sell more Air Step shoes than they do Red Cross. The witness didn't say it was the principal, it was comparable to Brown's line of shoes, a conflicting line. The witness knows of one at Wapakoneta, Ohio. In the men's line he is selling Weyenberg and it is selling very comparably to Roblee.

The witness was asked whether some of Brown's franchise shoe stores are not family shoe stores, but just men's. He said, not exclusively men's but in the particular town that he had reference to on direct examination, prior to this man purchasing this store the major volume was in men's lines. He handled some children's shoes and some

growing girls' shoes. At the time he bought it he decided [fol. 356] to change the operation and handle more children's shoes and increase his volume. It was not a Brown franchise store before it was bought. It is the Sherman Shoe Store at Birmingham, Michigan.

That man has another store in East Jefferson, and the witness imagines Mr. Sherman has been on the Brown franchise plan 27 years. He just bought a new store in Birmingham a couple of years ago. He has been on the plan some 20 years and in this store 2 years. The store in Birmingham is now a Brown franchise store. The only women's shoes he carries are sport-type for girls. It is now out of the children's shoe business. They recommended that it discontinue the children's line. The Brown lines it carries now are Roblee, Pedwin, and a few Glamour Deb girls' flats. That is all the Brown shoes. The witness can justify his time in helping that man, based on his volume and shipments.

Q. If he went into the women's line and took a line other than Brown and became a substantial women's dealer, would you continue to recommend that he stay on the Brown franchise program?

A. You mean, by just taking on one additional line?

Q. Suppose his women's line became completely other than Brown; he just took on——

Mr. Burke: Well, I think that's a sort of speculative type of question. I think he ought to confine it to an example, if he knows one.

Hearing Examiner Creel: Well, I think it's speculative, too; but if the witness can answer it, I will overrule the objection.

A. I don't think I could answer that until I was confronted with a situation of that kind.

By Mr. Rogal:

Q. Well, I am assuming, of course, his volume would remain the same on the men's line.

A. Yes.

Q. As far as justifying your expenditure of time, is there anything other than the volume that a store does?

A. Yes. But you realize, of course—and I think it is quite [fol. 357] obvious—that if a dealer doesn't handle a Brown Shoe Company line there is no point in our rendering the service. You know, of course, that we do want to make distribution.

Q. There's no question about that. But what I am trying to find out is why you wouldn't continue to render the service.

A. I don't think that on another line of shoes he might bring in there I would be in position to render him any service.

Q. But to continue to render him a service on the men's line, would that change the situation?

A. I don't think it would.

Q. In other words, you could still profitably spend the time there, regardless of his other lines, as long as his volume remained where it is today on the men's line?

A. On our line of shoes.

Q. Yes. On the Roblees and Pedwins and Robin Hoods, I believe you said.

A. Yes.

The witness is not familiar with what the Brown salesmen's service consists of. He talks to them a lot, but not relative to service they render accounts. They are not just pure order takers. There is a liaison between the witness and salesmen who service his accounts. He works with the witness on open-to-buys and so on, so he won't over sell them.

As to whether the witness has in his territory 2 Brown franchise stores that compete with each other, he said they do have cases—he doesn't recall one in his territory right at this particular moment—of a department store that will be a family operation, and also a family-type shoe store.

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[fol. 358]

March 10, 1961

RICHARD PRATER, called as a witness for the Respondent, testified as follows:

### Direct examination.

He lives at Glen Ellyn, Illinois. He is employed by the Brown Shoe Company as a field man. He has been a field man, working directly for the Brown franchise division, a little over 7 years. Mr. Johnston is his immediate superior. He covers the territory of Northern Illinois, Northern Indiana, Western Michigan, the Southeast part of Iowa. He covers no part of Wisconsin. There are approximately 51 stores in that territory which are on the Brown franchise program. He tries to call on all these stores during the course of the year. The frequency of these calls varies. There are some stores that he may get to just once a year, and there are other stores that he may get to 3 or 4 times a year, based on their needs and requests for service.

The stores that he visits once a year, he helps with their yearly audit or financial summary, and the other stores that he visits 3 or 4 times a year are new stores where it is necessary for him to explain the bookkeeping system and help with the monthly reports and helps in any other service which the store may wish.

A field man's work covers quite a broad field. Primarily, they work to further the sale of Brown Shoe Company products by establishing new stores. Part of their work in connection with that is surveying the towns or locations of towns as to whether they feel a shoe store would be successful there, whether there are too many of them there to start with, or actually what the potential of that town is in regard to establishing a new shoe store.

In regard to establishing shoe stores on the Brown franchise program, the work of the fieldman varies. They help the stores in merchandising; they help and assist them in any way they can in plans or purchases for the year, in buying guides. Shoes are purchased twice a year by retail- [fol. 359] ers from manufacturers. In other words, a salesman will go out for major purchases twice a year. He visits them in the fall to sell spring shoes and he visits them in the spring to sell fall shoes. This is characteristic of the shoe business. Shoes are made well in advance. It takes quite a while to build them. This determines in a lot of instances the number of shoes that a company will

stock; that a shoe retailer has accepted these particular shoes.

The witness does not actually sell shoes himself. As to whether he tries to time his calls so that he will precede the call of the Brown salesman, the witness stated, in the preparation of helping them or assisting them in the preparation of their buying guides. That covers all lines of shoes in a particular dealer's stock. Actually there are two sections to a buying guide. There's actually an operating guide, which covers the money and expense control. That's an operating guide. That is where the merchant feels that he wants them to help him in determining that he spends the right amount of money for advertising and the right amount of money for his help, such things as that. That is not covered in the dollar guide. Then the rest of the buying guide has to do with the pairage control. The bookkeeping system supplies them with an absolute picture of their operation since they have been on the franchise program. The bookkeeping system of the Brown franchise program is furnished to the dealers on the program, free of charge, as a service of the company. This is part of the pairage control mentioned.

As to what pairage control is, the witness said, in our bookkeeping system we can show exactly how many pairs in each classification of shoes that man has sold each month, and we know his ending stocks from the monthly report. So when we go in to work with a dealer and assist him, we will sit down and list exactly the number of pairs of a particular classification he has sold that month. And then we have his ending stock. In other words, we have a picture of that particular classification of shoes for the whole year. And from that we know how many pairs of shoes he has sold, and from that we know what his average stock is for the year. And from that we can determine if he is getting the turnover that he should on a particular [fol. 360] line of shoes. And we do that for every line of shoes he carries in the store.

Turnover is a most important factor in the shoe business. The amount of business a person can do, is based on how much money he has, and the line of shoes is based on how much money he has. So, after we find the net worth of the business, from that we can determine,

through past experience of Brown Shoe Company over 36 years as a division, how many lines of shoes he should carry in that store based on his capital, based on his plant size. We feel that two times is a good turnover for a family-type shoe store, and most dealers will agree—and some of them want more turnover because that makes more money. The two times turnover is an average. The different classifications of shoes will vary. Children's shoes and men's shoes are a little slower turn than women's style shoes.

The picture is constantly changing in the shoe industry; and I feel that that's one way we can help the independent dealer, because really he is a sort of lone wolf out there by himself. Actually all he has to go to, if he is an independent, is to talk to another independent, or talk to a salesman. Now, a salesman is a lot different than a field man. A salesman has his job, and that is to sell shoes. As fieldmen our job is to see that those particular stores make as much money as they can. Everybody is in business for one thing, and that is to make money. So we try to assist him in any way that we can, in any services he asks for, to gain this control. We have nothing in mind, except for that guy to make money. Pairage control shows the performance of the shoes in a man's store. That's the turnover. Whether the man is making money on his shoes. It is all determined by turnover.

There are very few staple shoes any more in women's and growing girls'. The witness has been in the shoe business since 1933. Years ago it was very easy to run a shoe business because you just had to have a few shoes, and have enough of them, and that's all there was to it, because that's all that was offered to the people. [fol. 361] Today the picture has completely changed. It used to be that for a growing girl all you had to have was a loafer, a saddle shoe and maybe a mocassin-toe oxford. That was the stock for a growing girl. Today the picture is entirely different. The fad changes over night. Today you have to be on your toes, know what is going on, and be in a position competition-wise to buy these new shoes as the demand is created for them. The staple shoe would be good the next year, where today the styles change so fast you just have to get rid of them, put them on sale,



because the kids don't buy them any more—or the women don't. This is true of growing girls' and women's shoes, but the fastest change today has been in growing girls' shoes.

Women's shoes are sold on the basis of style, fashion and comfort. These styles and fashions change from season to season. This is getting to be more and more true in men's shoes all the time, but men's business is more staple. There are still a lot of men who want the same shoe over and over again. But the younger men are buying more styles all the time. They don't buy them because their shoe is worn out. They buy them because it is a new style.

There is a tough situation regarding children's shoes too, because what happened in the growing girls' shoes is happening in the misses' size. This would cover the girl that is in grade school. You have to merchandise your 12½ to 3 line of children's shoes the same as you do your growing girls' shoes and your women's shoes. It is constantly changing, and you have to keep on top of things all the time.

Regarding children's shoes in the boy variety, that situation is more staple, too. Actually in boy's shoes—the 3-to-6 run—your boy will be in there for about 2 pairs. It isn't as important a facet of business as children's shoes or misses' shoes.

Shoes for the female sex are a less staple type than the ones for the male. This is due to style changes and fashion consciousness on their part, and these factors are [fol. 362] constantly changing. In his work with the dealer, the witness is able to give him advice on that score. For example, they are sent from the office a list of the 12 best-selling patterns in each line of shoes. The lines referred to are all Brown Shoe Company lines. It's a good guide because if it's good here it is good in every place. In his work as a field man he becomes personally acquainted with the performance of various lines in his territory. He is more familiar with Brown Shoe lines. He does not have the same information, for example, on Red Cross shoes, as the information that he gets from his home office on Brown shoes. In traveling to various stores he develops some information on his own account as to how styles or lines of shoes are performing. A particular style

that's good in one particular price line is good in all lines in that particular category. It seems like all manufacturers more or less follow a style that is set by some high priced line of shoes where a promoter takes off, and these other companies adopt it. And maybe it's a year later, but they all have it, and the patterns are all similar. It doesn't mean they will all fit as well, or will wear as well, but it is a general practice.

He has 51 stores in his work as a field man. Those stores all stock Brown shoes in various lines. He keeps abreast of how those lines are performing in those stores. When he goes in to help the merchant prepare his buying guide, then he would have a picture of a full year's operation, a picture of the performance of a whole line for a year. The merchants prepare a monthly report, one which is sent to the field man, one which is sent to the company, and on the back of that is the breakdown of the performance on each line for that particular month with their ending stock. This gives the fieldman information as to how lines or styles of shoes are performing, on a monthly basis. That report is not received from all stores. He would say on the average about 35 stores would send it in. He won't get one each time from one, but maybe he will get one once in a while from all of them.

This information helps him in talking to the stores throughout his territory. From these reports he can [fol. 363] analyze the business. On the report there's a perpetual inventory, so the man knows at the end of each month, in dollars and cents, exactly how many pairs of shoes he has. Then when he calls on a dealer and helps him on his buying guide, he as a fieldman is informed as to the performance of Brown shoes particularly, and that information is important. It is the control of the dealer's business through using these figures. The dealer determines everything.

The buying guide is sometimes referred to as an open-to-buy. It is a set of statistics that the dealer prepares, from figures that came from his monthly report. After the dealer prepares it they sit down together and analyzes the performance of lines and talk things over. The witness makes suggestions as to how he can better his opera-

tion in whatever particular line they might be discussing.

If there is one particular category that is not performing and the stock is down, they will make an analysis of that particular category. If that is a Brown shoe line he is equipped with information to discuss that with the dealer. If it's a line of another manufacturer, he is not in the same position to discuss that with the dealer. He knows from the monthly reports how the dealer has done on these shoes. He doesn't have the information as to what is the best-selling pattern or line or anything like that. He is limited in that information to the experience he develops on his own in his territory. That is because the only information he would have on it would be the information he got from the dealer himself, as to which is the best-selling pattern. He is just not around the lines enough. He does not have the overall picture. From the buying guide that they prepare together the dealer determines the amount of shoes that he is going to buy for his next season. The dealer determines that himself. It is the dealer's decision as to whether he follows it.

Inventory is important in the shoe merchandising business. The amount of business a man can do is determined by the amount of capital he has. If he places orders for [fol. 364] too many shoes then his inventory becomes too high, and if the business doesn't materialize as he hoped it would, he might get in a poor cash position. He might not be able to pay his bills in time and lose his discount. The amount of business a merchant can do is determined by the amount of capital. That is the sole factor.

The Hearing Examiner said that it seemed to him that the amount of business he would do would be determined by what he can sell, not what he can buy. The witness replied that if he can't get the buying information he isn't going to sell. If a dealer has so much capital, he has enough money to buy only so many lines of shoes and that's all, if he wants to carry them as lines. This is assuming a customer acceptance.

Line concentration means that a man will concentrate on one particular price bracket on one particular make of shoe, or a line of shoes, that completely covers that field. This is related to inventory in the respect that he can only concentrate or only have so many lines

in his store, and if he tries to buy too many lines he won't be able to concentrate on any. That results in not being able to fit customers correctly, because the dealer will have to spread out his money or his capital or buying power to the extent that he is not buying the depth of shoes that he should, that are the best-selling patterns. Not buying the depth of shoes that he should means not buying the sizes and having them when the people want them.

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Line concentration is important because that is how you ~~make~~ use your money, by having the shoes on hand when the customer is there. By buying shoes in depth and concentrating on fewer patterns in a particular line of shoe, you are able to fit more customers and that means that during the peak season of the year, when your customers come in, if you have bought your shoes correctly in depth, and you have concentrated on as few patterns as possible to satisfy your customers, you will sell your shoes at a profit, which is what you are striving to do. This is a matter that the witness encourages dealers to follow, because he is interested in them being successful [fol. 365] and making a profit. And because he furthers Brown's sales that way. Concentration in a line is important.

Sometimes he runs across a situation where there are slow moving lines in a dealer's store. From their analysis if they find a line is not performing as it should, they will make a size and width analysis of a particular category. That is a sheet that has all sizes listed that shoes are carried in. They go to the shelf together and run a composite size check of all the patterns together. When this is done he may be able to find that in some instances, the dealer has been buying wrong sizes and there are too many shoes in that size. And the reason the shoes aren't selling is that the sizes aren't selling and the sizes are small sizes or large sizes. The dealer is not buying shoes in that particular instance in the correct sizes. It could be that the dealer was a little optimistic when he bought these particular over sizes or small sizes. Fit and size have a great deal to do with the sale of shoes. Style

has a lot of effect, too. It has an effect on the slow-moving line. It could be that the shoes are too old in style. Overlapping styles could have an effect on the slow-moving line. If the dealer would buy the same pattern shoe in every price line, there could be an overlap in that way, and he just had to move that one particular pattern. For example, in women's shoes, if a dealer had three price lines and bought the identical style in each line, that could cause an overlap. And in turn this would cause a slow-moving item.

If you bought overlapping styles in the same price line with two lines, that would be worse yet. In comparable lines the best-selling shoe in one line will, 9 times out of 10, be the same shoe in another line, and if you bought that particular shoe in all your lines, it would just be foolish. It would be foolish in the first place because you would be cutting down the patterns you could ordinarily present to give a variety of offer. By buying this in one particular line you would be cutting out a pattern that would offer more of a variety of style.

If a man carries two lines of shoes at the same price, there can be an overlap there, too. In the witness' opinion, [fol. 366] this is not good merchandising, because the dealer doesn't have a variety of patterns to show the lady. The dealer can't have a variety of patterns where he carries two lines of shoes at the same price because he has just so much money to spend for shoes. He has to spend it to the best of his ability, to try to avoid this overlapping in the same price field or in various price fields. If he avoids overlapping it is to his advantage because he won't have odds and ends left at the end of the year that might result in a markdown. The witness thinks that the dealer is in a better position to handle the needs of his customers if he follows the procedure which he is talking about. He will be able to present a variety of shoes in the styles that he hopes the women will want and buy. Having a variety of shoes in the style he hopes the women will buy means trying to have the best-selling patterns in a particular line of shoes. You can, by buying one line of shoes, give a much broader coverage than if you buy two lines of shoes, because if you bought the best-selling patterns in the other line of shoes you would be buying the same patterns over again.

By broader coverage he means you will be able to have more of a variety of shoes by not having the overlap. He is talking about size and patterns. Patterns in ladies' shoes have something to do with heel heights. But a heel height is not a pattern. It's a different height heel in the same type of shoe. It is an important factor in merchandising shoes because women request different heel heights. Patterns as he uses the term is the particular style of the shoe, the design of it.

Line concentration simplifies a dealer's position in buying shoes. He doesn't think that has anything particularly to do with the dealer's financial advantage. The number of lines a man can carry is based on his capital. He wouldn't want two lines of the same priced shoe in his store if it would take away from him having another line that he should have.

If you have a slow-moving line of shoes in a store, the witness said, we will discuss the problem with the dealer, and in instances we have suggested that he cut the price [fol. 367] of his shoes if we feel that that is the reason. He doesn't believe he has ever suggested a dealer drop a slow-moving line. They have discussed them but he never recommended really it's the dealer's decision. That's something that the witness can't tell him to do or tell him not to do or anything like that. Dropping a slow-moving line would be a method of curing the situation. If there was no profit in it that would definitely be a way to do it. His suggestion would be up to the man to decide. The witness might say to the dealer, "Here it is. This is what's happening. You've got this amount of money invested, and you aren't making any money." It would be up to the dealer to decide, whether to continue buying or to drop it.

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The store at De Kalb, Illinois, called "Leo's Shoe Store", is in the witness' area. It carries Freeman shoes. It is a franchise store. The store has been carrying Freeman shoes from the time it started, in March of 1960, give or take a month.

None of the stores in his area, to his knowledge, carry Huth-James men's and boy's shoes. He has never heard of Huth-James men's and boy's shoes in his territory.



### Cross-examination.

Some of the witness' 51 stores have as a principal line in any category a line other than Brown. For example, Rasmussen. Rasmussen's Shoes carry Carmo's shoes in Winnetka, Illinois. Carmo's is a women's line. They are priced higher than Brown shoes. They go from \$14.95 up and are high-styled shoes. None of his stores carry as their main line, in the same price range as the Brown lines, a line other than the Brown line. A situation where one of his stores in any one category drops entirely a Brown line, in men's, women's or children's shoes, but just in one category, [fol. 368] and takes on another line, has never arisen. He hasn't had any instructions on what to do in the event such a situation would arise.

Women's and growing girl's shoes are sold on style or fashion. This means the customers in this category are fashion conscious. It also means that if you don't have the style or fashion they want you will lose their sale, if your salesmen aren't good enough to sell them what you have. As to whether you are somewhat limited in the number of different styles or fashions that you have, if you have only one line of shoes in the store, the witness said, no, you are not.

Whether it is more desirable to have an additional line in order to get the additional fashion is up to the option of the independent dealer himself. He can decide it that way if he wants to. But it is still the witness' contention, which he has explained. He believes in buying lines of shoes you are able to get the best-selling patterns, and by this depth program you will be able to have the ones that sell. You can't sell everybody that walks in your store, that's an impossibility. But by doing it the way they suggest you will sell the largest percentage. You try to sell them all, but you can't satisfy everybody.

Hearing Examiner Creel: Is it any part of your duties to persuade shoe people to become Brown franchise accounts?

The Witness: To persuade, sir? What do you mean? My job is to sell Brown Shoes Company lines, yes, sir.

Hearing Examiner Creel: Well, that's what I am getting at. You say you call on these 51 that are Brown franchise

accounts. Now I am asking you if you call on people in an effort to persuade them to become Brown franchise accounts.

The Witness: Yes, sir. That's our job, too.

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[fol. 369] WILLIAM D. PINNICK, called as a witness for the Respondent, testified as follows:

Direct examination.

The witness resides in Ballwin, St. Louis County, Missouri. He is employed by the Brown Shoe Company as a field representative with the franchise Division. He has been so employed for a little over 2 years, since January, 1959. He has had previous experience in shoe retailing. His experience includes approximately 2 years as a salesman on a retail sales floor with Famous-Barr (or the May Company) at Clayton, Missouri. Previous to that, 2½ or 3 years with Kline's West shoe department in Clayton, Missouri. He had 2 years of service in the Army, previous to which he was working at Kline's downtown in St. Louis, as a salesman.

His territory as a fieldman is Missonri, Illinois, Indiana from Highway 24 south, which runs from the Ohio line to Highway 65 in Missouri. There are 51 franchise stores in the area. As a fieldman, he calls on these stores in his district. He visits these stores on an average of no less than 3 times a year and sometimes more. It is his job to observe and analyze the entire operation in all phases and to recommend any changes which he thinks would be beneficial to the merchant as far as the year-end net profit showing is concerned. It is strictly a recommendation. It is the dealer's business and he can either take or leave any suggestions which the witness might make.

The witness has heard of the term "line concentration." He said that it is a term generally used in shoe retailing or the shoe merchandising business, and that it is a very important factor in retailing. It means where you take a particular brand or line, as you have here, and you more or less concentrate your purchases within this line so that you get

completely away from duplication of types of shoes in various other brands. He thinks this is very important. By concentrating within this line you are able to put maximum pairage purchases within your scope of patterns, which, in turn, you can concentrate in depth the sizes. More sales are [fol. 370] lost in a shoe department and family operation in similar size stores that he services by lack of sizes rather than lack of patterns. You may have 20 patterns in 4 different brands and no size depth whatsoever. When you do this you present any potential customer with a style shoe and are, in turn, unable to fit the customer. So all you have done is do somebody else's leg work for them, and the next store they walk into gets the sale.

He would rather have fewer patterns within a line, concentrate in more size ranges, to satisfy 65 to 85 per cent of the customers that come in his store, rather than taking any one given line and spreading it across the board with single size depths or single shoes in sizes in any one particular style.

Overlapping lines would not help the situation. In the shoe business you do a certain amount of retail volume at a certain markup. In turn, you plan on the amount of cost of sales; the amount of turnover you would like to achieve. This limits the dollars you spend. By overlapping brands you are cutting down your ability to put your money where it returns your investment. By carrying the depth of sizes you are able to satisfy the majority of the customers coming into the store. You may not be able to show them quite as many styles, however, you are more able to fit them. Say you have 3 in B's, 2 in AA's, going to any one particular shoe. If you sell any one shoe you are not out of business, you have a back-up shoe. You have shoes that you aren't about to miss a sale with. You are able to service most of your customers.

. . . . .

A good merchant will order fill-in sizes every week. Depending upon his location from St. Louis or Trenton, Tennessee, he should have them in the next week. They are shipped by express.

Line concentration bears on the inventory situation of the dealer. By concentrating within a line, or on fewer

lines, they can accomplish a maximum of volume at retail on a minimum of inventory, thereby turning shoes into cash rather than shoes on the shelf. In other words, the [fol. 371] same amount of business with a small inventory is exactly what it means. The dealer has less capital tied up and has fewer mark-downs at the end of the season, and is able to do a greater volume of business because on this basis he is open to buying new and changing current patterns. When you are open to buy you have available capital. You are not in the position where if you buy too many lines of shoes in any one price range, or you are heavy on merchandise, you have to do one of two things. You either have to mark the shoes down to get cash to buy new shoes, or you overbuy and go ahead and buy new patterns anyway. Consequently, you double your inventory and not your sales.

The witness would say that the majority of the dealers in his territory practice line concentration. That's why they like the program, because they make money. He is talking about the 51 dealers in his territory. To his knowledge, he has no dealers in this territory that do not practice line concentration.

He has never told a dealer on the Brown franchise program in his territory that he could not carry a particular line of shoes. The decision as to what line of shoes the dealer carries is a matter for the dealer. The witness said, it is his business. He makes his living out of this. This is his decision to make.

In his work as a fieldman, the witness has particular knowledge as to the various lines of shoes carried under the Brown brand and sold by Brown Shoe Company. That information, basically by pattern number, is sent out to him. He gets all correspondence to all sales divisions of Brown. He is familiar with the top number of sellers in each line by number. He also picks up a great amount of information from the dealers that he works with, due to the fact that they are concentrating on the lines he is familiar with, and he can pass along information to the various other dealers in the immediate areas which may be of some help. That relates to the performance of the various styles or types of shoes.

The witness is definitely more familiar with the Brown

brand of shoes than with the other merchandise because [fol. 372] that is basically the merchandise he works with. He would say that he is in a better position to advise a dealer in regard to the shoes with which he is familiar. He uses this type of information in counselling and advising with the franchise stores. He is not in the same position to give the same type of counsel and advice with regard to brands of the other manufacturers. He is unfamiliar with them. As to whether this has any effect on his ability to counsel with the dealer on his overall operations of his store, the witness said, I would be able to give a dealer much more help in counselling and guidance in lines with which I am familiar than the other lines that he is carrying in the store because the only thing I would have to work with would be his pairage guide on the back of his monthly report and buying guide. I have no idea of the style pattern or service policies or what have you of other lines than those I work with. With the Brown brand shoes, he would hope he has complete knowledge on that.

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ROBERT G. STOLZ, called as a witness for the respondent, testified as follows:

Direct examination.

His residence is St. Louis County, Missouri. He is employed by the Brown Shoe Company, and is Vice President in charge of advertising and publicity. The advertising that Brown Shoe Company does on a national advertising basis is under his direction and supervision. Their national advertising program is designed to help build brand acceptance and brand recognition of their men's, women's, and children's shoes and to help pre-sell the consumer on the value of these brands. Preselling is one of the most important functions of national advertising.

The media they use in connection with national advertising varies. Brown has used television, radio, newspaper, magazine advertising; but over the years they have concentrated the majority of their effort in national magazines or so-called print media. Their national advertising is now [fol. 373] mostly concentrated in that area. They feel that

national magazines do an excellent job of matching the population of the country. In other words, the percentage of the population of New York City is usually matched by the same percentage of circulation of a given national magazine in that area. So it allows Brown total national coverage of their brands and of the population. Secondly, it also provides a very good visual presentation or graphic presentation of their advertising story and their merchandise. This is also a part of preselling the brand.

This type of advertising is one of the reasons why retailers seem to prefer branded merchandise, not only in Brown's footwear but in almost any category of merchandise. It creates a customer awareness or a customer desire. Other shoe manufacturers engage in the same or similar type of national advertising. He would say the great majority of shoe advertisers and manufacturers are using some form of national advertising. It is definitely a practice in the shoe manufacturing business.

The success of national advertising is not a direct benefit from how much money you spend on it. This is particularly true in the shoe business. The development of a brand of shoes can occur for many reasons not related to the volume of advertising dollar placed behind it. There are many examples where style alone can create a considerable demand for the product. One recent example are Hush Puppies, which started and were created only a few years ago. It is a brand of men's shoes which were created in a casual style with a new type of leather, with a waterproof feature, and it seemed to take the country by storm. They started out with practically no advertising and were able to get far superior distribution of their product than Brown has been able to obtain on their men's products after being in the business for 82 years.

Respondent's Exhibit 3 was marked for identification. This is a copy of a national ad which appeared in "This Week" magazine and also in "Parade" magazine, both of which are Sunday supplements distributed through Sunday newspapers in 110 of the major cities of the [fol. 374] country with a circulation of about 22 million. It is an ad for Hush Puppies.

In other examples of not well known brands that have



not been dependent upon advertising, Stride Rite, a brand of children's shoes, which is neck and neck for leadership as the largest brand of children's footwear today, has done relatively little advertising over the years. And they have built their business almost entirely—in addition to a good product—upon a service factor, where they have been able to prove to their customers that they can deliver their footwear on time and to the extent which is ordered by the retailer. That's the other extreme, with no advertising. Respondent's Exhibit 3 was received in evidence over objection as to lack of materiality and relevancy.

The witness has something to do with the design or establishing the general policy as to the format of the ads that Brown uses in its national advertising. As to their objectives in setting up the ads of Brown, he said advertising, as they see it and use it, has principally a sales message in print, consisting of an illustration of the merchandise, a description of the merchandise, which would include benefits and selling points to the consumer, the brand name of the merchandise, and the price of the merchandise. They are desirous of making this advertising the most effective and the most efficient possible advertising to the consumer and also helping to presell their product for the retailer to the consumer.

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[fols. 375-378] The witness has reviewed items that have been in recent publications involving the soft goods field, and shoes particularly. He has prepared exhibits based on this study that he had made recently. A looseleaf book and pages therein were marked Respondent's Exhibits 4-A through 4-Z-3 for identification. The witness was shown the exhibit. It has been prepared by him or under his direction from the various national publications. Respondent's Exhibits 4-A through 4-Z-3 were received in evidence. The various advertisements in Respondent's Exhibit 4 were taken from national magazines widely used by the shoe industry in national advertising. In his opinion these ads are typical of the national shoe advertising of various manufacturers.

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[fol. 379] EDWARD BOMAR, called as a witness for the Respondent, testified as follows:

Direct examination.

He resides at Jackson, Mississippi. He is a sales manager of the Risque Division, Brown Shoe Company, and has been since February 6, 1961. He has previously been in the shoe business.

The witness is still Vice President of Bomar's, Inc., but is no longer active in the management of Bomar's. His period of active management was from 1945 until the latter part of 1955. There are 4 units of Bomar's, 3 in Jackson, one in Laurel, Mississippi. They are all part of the same ownership, the same corporation. His actual duties were merchandising or setting up buying plans twice a year for the stores. The day-to-day operation of the stores was left to local management, the man in each store. The stores were under the Brown Franchise program while he was a manager. They were started out on the Brown franchise plan August or October of 1947. They are still on the Brown franchise program.

The term "line concentration" is a familiar term in the merchandising business. Line concentration to the witness means to reduce as much as possible unnecessary duplications of patterns, styles. It is very important. The complexity of sizes in the shoe business is a difficult thing to stay on top of, in the sense that there is a broad selection of widths and sizes, and any multiplicity of patterns or brands only adds to the problems of inventory control and trying to develop adequate turnover to produce a net profit. He said, it's almost a maxim in the shoe business that a greater degree of concentration produces a greater degree of profits. They felt that they followed a line concentration policy in the Bomar stores at Jackson and Laurel.

The Bomar Stores at one time bought a shoe called a Deb shoe, or a brand of the Deb Shoe Company. Debs were a new line in the late '40's, launched at the time of another dress shoe line by the name of Troylings. It must have been in 1948, the spring or fall of '48. They bought both [fols. 380-381] of the lines just mentioned at the same time.

They continued Deb shoes until about 1953, which was probably the last season they had them in the stores.

The Bomar stores started in business on the Brown franchise program, and they were on the Brown franchise program when they first bought the Deb shoes. Bomar's were incorporated in 1947. They carried the Deb shoes until about 1953, when they stopped because of problems. Deb shoes had a concept of making shoes at that time which was new in the soft light weight field and it became quite an important factor as far as the consumer was concerned. Bomar's went into them and did real well with the shoes for a couple of years. Deb Shoe Company got later and later with delivery dates. The quality and workmanship began to deteriorate and finally they couldn't get along with the Deb people at all and had to drop them. Deb shoes were not dropped because the Bomar stores were on the Brown Franchise program.

The Deb shoes were replaced with the old Johnny Flautt Shoe Company, it was known as that at that time, that made flats and casual type shoes. That firm lasted about 3 years and was reorganized into a firm called the Dori Shoe Company, which is presently in existence. He guesses that you could call the Deb line of shoes high-fashionable. It was a look or a feel in the sense that that was the beginning of an evolution in the shoe business of what they call unlined weight leathers. Other shoe companies followed that style or pattern after the Deb Shoe Company came out with theirs. It started out with what you would call a fashion fad, then became a trend and an established category in footwear. Everybody makes it.

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[fol. 382] Cross-examination.

The distinctive feature of the Deb brand shoes, which caused Bomar's to buy it back in 1948, was a construction in the shoe business called slip-lasted construction. Wedges, mostly open types. This became a real football during World War II because it was a nonrationing, nonticket item, made in canvas and plastics. You could get them without a stamp. And this put the kiss of death on that construction. Women just got tired of it. So the evolution of

flats and casuals ala the Deb look resulted. Bomar's put them in and did real well with the shoes and this became not just a fad or a gimmick but a basic part of the shoe business. And they would have continued with Debs but they couldn't get service from them and it was not the quality of footwear that they had been used to selling in the store.

The distinctive feature was the unlined weight leather. After 1948, other shoe companies brought out lines with this unlined weight leather. Everyone got into the act because it was a general thing all over the country, this trend of footwear. Many new companies sprang up, making these kinds of shoes. They felt Deb had the best selling and at that time the best for the needs of their stores. The term "weight" refers directly to the thickness of the leather. It is a much softer tannage too. The pointed toes in Deb shoes had nothing to do with the term unlined weight leather. That would depend on the last it was made on. That was not a distinctive feature of Debs. The pointed-toe look first started about 5 years ago, and that progressively has become basic in the business, and all pumps today are built on some variation of the pointed toe theme. [fol. 383] As to when Brown Shoe Company started on this type of shoe, the unlined weight leather, the witness said, they must have done it at the same time because Brown had lines making these kinds of shoes at the time that Deb was making them: Westport, Glamour Debs. He did not think Life Stride had them. They were a bit different field.

The Bomar chain at Jackson was a group of chain stores when the unlined weight leather came on the market. They opened the first shoe store downtown in late 1947 or the beginning of 1948. Then they opened a second branch store in 1951, and the third branch in 1955, and then they picked up the Laurel unit in 1958. Three stores are in Jackson and one is in Laurel. Laurel is not a suburb of Jackson, it is 90 miles to the southeast.

Brown Shoe Company was making the same kind of shoes that Deb was when Bomar's decided to buy Deb. As to why they decided to put in Deb shoes rather than

an equivalent line, the witness said, we felt they were a little bit better style and more suitable for our purposes. Better made at that time. We didn't think there was enough fashion in the Brown Shoe Company's interpretation of this. We felt their use of leathers and materials was more suitable for the story that we were trying to sell in our stores. Brown had an equivalent type of shoe, disregarding styles, in the same price category. As a matter of fact, they were in the same price field because those shoes at that time were retailed at \$6.99, \$7.99, \$8.99: and today they would be \$10.99 and \$11.99. The Troylings lines of shoes, which Bomar's put in at the same time as the Deb shoes, were in a price category of \$12.99 to \$14.99. They were of a different character of shoes than those others under discussion. They were women's dress shoes, fashion shoes, mostly high heeled, much dressier. Bomar's put on a full line of Troylings shoes in that category. They felt that with the addition of Troylings and Deb shoes that this would give them a better assortment than anything else they could buy.

One of their problems with Debs was a difference of opinion on who stood the brunt of the responsibility of [fols. 384-388] deliveries. The witness said, I recall an incident toward the end of our relationship where he was 60 days late with it and insisted on shipping us the shoes, even though by that time Easter season was over. And we had a hassel going back and forth. And finally I told the boys, "Well, find yourself a replacement for these shoes because we can't make any money on the shoes if we have to take them 60 days late." Now, I don't say that that is the only reason we dropped Deb. The shoes had become poor-fitting shoes. They had so much work that it was coming out of their ears, and they couldn't deliver shoes on time, and they were ramming them through the factory, and they were coming out very shoddy. These were all contributing reasons as to why they dropped Deb shoes.

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[fol. 389]

May 15, 1961

HUBERT C. ROGERS, called as witness for the Respondent, testified as follows:

Direct examination.

He resides at Ennis, Texas. He is in the retail shoe business, and has been for 40 years. He presently owns 4 stores, 2 of which are in Ennis. He has a self-serving shoe store, shelf store, and then a regular family shoe store in Ennis. The self-serving store is called Economy, but the others are Rogers Shoe Stores. He has one in [fol. 390] Huntsville, and one in Crockett. His sons are associated in those stores. The stores in Huntsville and Crockett are also known as Rogers Shoe Stores.

The 3 stores with the name Rogers Shoe Stores are on the Brown Franchise Program. The Ennis store went on the program about 1934, the Huntsville store went on in 1949, and the Crockett store, was just opened about the first of March. They closed a store they had at Temple the first of January. They had a store, called Rogers Shoe Store, at Temple for 8 years. That store was on the Program, too. They liquidated and moved it to Crockett.

Rogers' Shoe Stores which he presently operates carry about the same lines of shoes. There may be one line in one store that he doesn't carry in the other two. In Ennis, the Brown lines he carries are: Roblee and Pedwins in men's shoes, Naturalizers, Life Stride and Robin Hood in women's, and Busters and Robin Hoods in children's. Robinettes is the way they carry those women's shoes. Then he carries Hood Rubber Company and Antry Rubber Company, for canvas footwear and storm wear. He also carries Daniel Green houseshoes and Acme boots, Viner's loafers, Viner's Shoe Company out of Bangor, Maine, and Red Wing work shoes. He carries Wohl women's novelties and women's flats. He buys some Graham-Brown women's and children's shoes in the cheaper lines.

The lines that he has referred to are in the Rogers Shoe Stores in Ennis. He carries approximately the same lines in the Huntsville store. The same is true of the Crockett store. He has carried these lines for a num-



ber of years. There are some lines which he previously had but does not have now. He has bought lots of different lines through the years. At one time he carried some Deb shoes, both for the Huntsville and Ennis stores. That was 4 or 5 years ago. He discontinued buying Deb shoes because he just didn't feel like he needed the line. As to whether anyone from Brown Shoe Company told him that he had to discontinue those shoes, he said, no, they never did tell me that.

[fol. 391] No one from Brown ever told him that had to carry U. S. Rubber footwear. He used to carry U. S. Rubber a good many years ago and during the war they kind of "weaned" him, and he has done without U. S. Rubber ever since. He doesn't carry very many Hoods now, but does carry a few. Autry is his main supplier of canvas and rubber footwear. Autry Rubber Company is in Dallas. They are not manufacturers, they are jobbers.

The witness said he had to have a definite policy in merchandising shoes. The policy is difficult to describe. He just buys them and sells them at whatever the market will bring and what it will stand. And he tries to buy the shoes he needs and when the stock get below a certain point, then he is open to buy more merchandise. When it is beyond a certain point, he tries to merchandise the shoes he has.

. . . . .

[fol. 392] As to whether he had ever signed a written franchise agreement with Brown, in regard to any of the stores, he said, when I went on the Brown franchise plan back in the dark ages of the depression, they gave me a line of credit that was probably more than I was justified in getting, and I agreed at that time, I signed the agreement, but I could not tell you one paragraph in that agreement, and as far as I know, that was filed and that was the end of it. If it's ever been brought out and reviewed, it's been by them. I might have had a copy of it, but I don't remember, what I signed. At [fol. 393] no time has the witness ever had occasion to refer to the agreement. No representative of Brown Shoe Company ever called his attention to any provision in it. Nobody from Brown has ever told him that he must carry

certain Brown lines of shoes, and nobody from Brown has ever told him that he could not carry any outside brand lines.

The witness has heard the term "line concentration" in the retail shoe business. It means that instead of getting the sweet stuff out of every line of shoes, you just buy one line of shoes and stay with them. As to whether he conducts his business on that basis, he said, yes, sir, I sure do. I just don't have any odds and ends, I don't have any duplications of styles and sizes. What is good in one line of shoes is good in the other line of shoes, every line of shoes that I see has, they have lines, styles that are very familiar. If I buy one line of shoes, then I turn around and buy another line, I buy similar styles because the styles that are good in one line are good in another. He attempts to avoid conflicting lines so that he can operate on less money. He can merchandise his store better. He can have more profit in the end in money and not in shoes.

The witness is acquainted with the Clinic line. He never carried it because he did not feel that he needed them. His stores are family shoe stores.

He has never carried a Freeman shoe. A Freeman salesman has called on him lots of times. He did not buy the shoe because he didn't feel like he needed that line of shoes. His reasons for not buying Freeman shoes has nothing to do with being on the Brown franchise program.

The witness had purchased Weyenberg shoes way prior to the time he went on the Brown franchise; prior to 1934. A Weyenberg salesman lives in his town and he has an account there. He has never offered to sell the witness any shoes. He is referring to the Ennis, which is between 8000 and 9000 in population. The account he mentioned with Weyenberg is a men's shoe store.

He has never carried any shoes manufactured by Huth-James. He does not recall that a salesman of Huth-James ever called on him. He has never carried any shoes manufactured by the Leverenz Shoe Company. No salesman for Leverenz has ever called on him. He is not familiar with it.

In regard to the franchise program, and his understanding of how long he has to be on the program or whether he

can leave it, he said, I didn't know there was any time limit. I am not familiar with the requirements of a new store. When we opened this store at Crockett, I just went up there and bought the shoes. I didn't know of any requirements. I didn't sign any kind of agreement in Huntsville that I recall.

#### Cross-examination.

The witness has been with Brown shoes since 1934. Brown extended him a line of credit in 1934.

He said, at that time they extended me a 60-day line of credit. Brown Shoe Company has never loaned me any money. They sold me some shoes and gave me a 60-day line of credit. Since that time, credit terms have been changed from time to time, 30 days, 5 percent off, and 30 days, two off. They will sell me some shoes, sometimes, and they will ship them ahead of time, shoes I will buy for March 1st, they may ship them in January, February. I have enjoyed a very good credit rating with Brown Shoe Company from the first day I opened my store. Now, when I opened the Huntsville store, they might have given me an extra 30 days in order to open the store. When I opened the Crockett store, they extended me an extra 30 days to get opened up and get ready to do business. You have to have your shoes a little ahead of time before you go to selling them. That is the only way they have ever extended me any special credit, any more than they give to anybody else.

The witness enjoys a very good relationship with Brown Shoe. He has never sent in an order that was held up on account of his credit.

He is familiar with the architectural services that Brown has available, and he has used those services. The first use was for the building of the shelving in his present store. They gave him blueprints to build the shelves. Then they gave him some drawings of the arrangement of his [fol. 395] store when he opened in Huntsville. They also gave him complete drawings for a new front in the Huntsville store. When he opened the Crockett store he went on his own. He just opened the store down in a small country town of some 6,000 people and he didn't want it dressed up too much, so he didn't ask for their architects to give

him a drawing for that store. He will want to put a new front in that building one of these days, and he expects them to give him a drawing for that.

Brown has never helped him finance putting on a new front, or another store.

The witness has his sons with him now. His oldest son has been in the Huntsville store since it opened, and his youngest son was in the Temple store and is now in the Crockett store. After 40 years in the business, he is still selling shoes every day, but he said he is not even very good Saturday help now, and they'd just as soon he'd stay out of the front. He has a manager in the Ennis store, then his oldest son manages the Huntsville store and his youngest son manages the Crockett store. In Ennis, at the self-service store, a lady looks after it. He rarely goes there except after hours. He is not supposed to own the store. As to how long he had held the status of semi-retired or retired executive, the witness said, that is a debatable question. He doesn't think he is retired at all. He is in the store almost every day.

The witness carries some Graham-Brown shoes. They are cheap flats and loafers. Graham-Brown are jobbers in Dallas. Those shoe retail from \$1.99 to \$3.99, and some few men's shoes get up as high as \$6.99. He carries some Viner loafers which are made in Bangor, Maine, in all 3 stores. They are a \$6.99 loafer. They are competitive, but he likes the Viner loafer better than the others.

The Crockett store went on the Brown franchise on the day it opened, March 1, 1961, and the Temple store has operated as a Brown franchise from the time he bought it. It was already a Brown operation. That was in 1950 or maybe 1952 or 1953. He didn't really know.

The witness was asked by the Hearing Examiner if he gave up some lines that he was carrying when he went [fol. 396] on the Brown plan at his Ennis store in 1934. He said, that was from a "standing start." He had been in business there and had been an officer and director in a company that got into financial trouble and went into the hands of receivers. Meanwhile, he was still working for them. Then he resigned and went into business on the Brown plan. He had not been in the shoe business for himself, in his own name. In 1919 he was vice president

and manager of the Thomas Shoe Company for a period from 1919 to 1924 or '25, somewhere along there, and then was an officer and director in Jolesch Shoe Company. They had a chain of stores and he was assistant manager of those stores. They got into financial trouble in 1929, '30 and '31, and when it folded, he went into the same building that he was in all the time. That was in 1934.

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ALVIE RAY COLEMAN, called as a witness for the Respondent, testified as follows:

Direct examination.

He resides in Vernon, Texas. He has a shoe business, Coleman Shoes. It was a partnership established in 1947. He bought the store himself 5 years ago this month. The store is on the Brown franchise program. It has been a Brown franchise store since 1947. The witness has been in the business 20 to 25 years, closer to 20. He is the owner of the store at this time, and actually works in the store.

His store carries, in the Brown line: Air Steps and Life-Strides in ladies, Roblee and Pedwin in men's and Buster Browns and Robin Hoods in children's. He also carries Daniel Green house shoes, U. S. Keds, Haggardy shoes, because it is an arch type shoe, out of Washington Court-house, Ohio. He carries very few shoes from Endicott-Johnson, and a few shoes from Pfeiffer, Wayne Shoe Company, Williams Shoe Company, and Acme Boot Company. There might be a few others, but that basically is the major lines. U. S. Rubber Company is his major canvas and rubber footwear supplier. He buys some from Autry Rubber Company out of Dallas.

[fol. 397] The only way he gets a price deal from U. S. Rubber Company is by buying volume, whether through Brown or buying direct, he can buy either way.

The only way you can get a discount is on the volume you buy, whether you buy 500 pair or 100 pair. That is from the house, that is not through Brown Shoe Company. That is by buying just in volume, they call it volume

discount. It is his understanding that he could obtain shoes from U. S. Rubber Company at the same price whether he was a Brown franchise dealer or not. As a matter of fact, he bought from them for years like that until they could be invoiced through Brown. Some old boy came by and mentioned on a volume deal he could get a deal. Of course, they could be billed through Brown Shoe Company, it was never mentioned to him through Brown Shoe Company that they could be bought that way.

He has carried U. S. Rubber shoes practically all the time since he opened in 1947, but not on as big a scale as he buys them now. It's a volume deal. He gets 3 or 5 percent discount, depending on how many he buys, on original buy shipped from the factory out of Naugatuck, Connecticut.

He has never obtained a loan from Brown Shoe Company.

In determining the lines of shoes he carries, the only policy he has is to buy what he can sell, what he can turn, when the customer wants at the immediate time, and sometimes that falls in the category that Brown doesn't have it, he buys from some other company. Specialty shoes or anything that he can get that he needs and he doesn't buy them from Brown because they just don't have it. Brown never requires of him that he buy shoes from Brown. It never has, in connection with the Brown franchise program or otherwise, told him that he must carry Brown lines. In connection with the Brown franchise program, no one from Brown has ever told him that he could not carry an outside or conflicting line of shoes. No one from Brown has ever told that he must get rid of an outside or conflicting line of shoes.

[fol. 398] He does not have a Brown written franchise agreement.

The term "line concentration," in relation to shoe retailing, means to the witness that the less lines you buy the less odds and ends you have at the end of the season to clear out. He said, his mind is not good enough to buy from a dozen lines and pick out all the good shoes in the lines. He buys a ladies' line of shoes, he figures the type shoe. If you buy from a half a dozen lines, you are going to have conflicts at the end of the season. That is the only way it means anything to him. The witness would



say that he does concentrate. This affects his profits. He said it leaves you with less odds and ends at the end of the season. You know where you are, and you don't buy conflicting lines. The effect it has is it ups your profits at the end of the year because you have less odds and ends. That is where you wash out at the end of the season, that is where you lose your money.

. . . . .

[fol. 399] He has never been called on by a salesman from the Juvenile Shoe Company. He tried to buy Clinic at one time and it worked out that they had an account in Vernon. He thought they were going to drop it; he would have liked to have had the line because of the brand prestige of the nurse's shoe, but they stuck with the line where they were. That account was Jimmie's Shoe Box in Vernon. He believes they also carry Lazy Bones, which are made by Juvenile Shoe Company.

The city of Vernon has a population of 12,000 to 13,000. If a brand is already carried by another dealer this does have an effect on his decisions, because you can't get it. They will open one account, that is about all. Assuming he could get the line but another store would have it, if he needed the line, if it wasn't a conflicting line and if he had the money, he might consider it.

The witness has never been called on by a salesman from Freeman Shoe Company. They have distribution in Vernon, Clayton's Men's Store. One season, five, six, seven years ago, he bought 120 pairs of Weyenberg shoes. He now buys some mail orders, some specials, occasionally from the Weyenberg Shoe Company. The reason he dis-  
[fol. 400] continued the Weyenberg line was because the shoe in their territory has no prestige whatever, has no particular meaning as far as the name brand, and he just didn't need the shoe. It was just an extra shoe that he didn't need in there. He believes that they are carried in town today at the leased department in Russell's Department Store.

The witness has been called on by a salesman from the Deb Shoe Company. He never bought Deb shoes because he just doesn't need them, and can't afford them.

It is in conflict with style and price categories. It would be the same thing if you were buying Deb and the Life Stride salesman called on you. You'd be right in the same category, you are buying the same thing, more or less, twice. No one from Brown Shoe has ever told him that he could not buy Deb Shoes.

He does not know of the Huth-James Company or what they make. He has never been called on by a salesman from the Leverenz Shoe Company.

#### Cross-examination.

The retail prices of the Daniel Green house shoes are from \$5 to \$9, that is, men's and women's. The Daniel Green line has a lot of different patterns of house shoes. The witness does not carry the full range of patterns. He has basic styles, he can't afford to carry all of them. In the men's and women's he carries from 10 to 15 styles. They probably have a hundred styles. The witness does not carry all of the patterns of the Haggardy arch type shoes. He buys 6 shoes from them, they have 6 good basic shoes. They are mail order shoes. He can get one pair or a hundred pair, or there is no limit to how many pair you can buy at one time. He buys a \$4.99 camp moccasin shoe from Endicott-Johnson that he cannot identify as far as brand.

From Pfeiffer, the witness buys a house shoe and little, even toe sandals and little tintable and dyable shoes for parties and weddings and things like that. They sell for about \$3.99. He buys a similar type shoe from Wayne, in high heels. Similar to Pfeiffer's, but in higher heels. Pfeiffer's are mostly flats and low heels for teenagers and [fol. 401] children. They sell at a comparable price. Wayne's will sell up to \$6.99. He sold approximately 200 pairs of those shoes last year.

The shoes from Williams are barefoot sandals, \$2.99, \$3.99, \$4.99 and sandals and flats, cheap shoes, table shoes.

A very important line the witness forgot to mention is Red Wing work shoes which he buys. Brown has work shoes but they don't have a good complete line of work shoes. He carries the U. S. Rubber type of weather-proof wear since he opened the store. In his part of the country they don't get a lot of rain, so they don't need a lot of

rubber protection footwear. What he buys principally is tennis shoes for children. He has been carrying them since shortly after he opened up in 1947—after the first year.

. . . . .

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[fol. 402] CHARLES SHERMAN, called as a witness for the Respondent, testified as follows:

Direct examination.

The witness resides in Idabel, Oklahoma. He is in the retail shoe business. He owns several stores: Sherman's [fol. 403] in Idabel, Preston Forest Village in Dallas, and he is part owner of a store at Midwest City, Oklahoma. Those are just shoe stores. He has a department store also at Idabel. His shoe stores are connected with the Brown franchise program. The Idabel store came on in 1952 or 1953. The Dallas store came on 1959, at its inception. The Midwest City Store was put on the franchise when he bought the store last February.

The witness has been in shoe retailing since 1949. He works in the store in Idabel and runs it, and in the other stores they have managers. In the Dallas store the manager sends the reports to him and he makes out the reports and sends the checks every Monday or Tuesday that are to pay off the bills and so forth. His partner who lives in Midwest City takes care of that. They have a manager for the Midwest City store.

In Idabel they carry Naturalizers, Life Strides, Robin Hood, Buster Brown, Pedwin. They also carry Crosby Square, Florsheim, Jolene, Daniel Green house shoes, and Ball Band rubber products from Mishawaka Rubber Company.

In Dallas they carry Life Strides, Buster Brown, Robin Hood, and Pedwins, which are Brown lines; and they also carry Florsheim, some Crosby Squares, some Penobscot and a few Tober-Saifer, Mishawaka Rubber Goods and Daniel Green house shoes.

No one from Brown Shoe Company that he remembers

ever attempted to tell the witness that he should buy his canvas and rubber footwear from U. S. Rubber Company. He doesn't at any rate.

Q. You have a written franchise agreement in connection with any of your franchises stores?

A. I think I do have, I never have followed it very closely. I haven't paid any attention to it, but when I put in the Dallas store, I think I did sign one for the field man.

Q. Do you recall whether you had a franchise agreement in connection with your store in Idabel?

A. Whether I signed one?

[fol. 404] Q. Yes, sir.

A. I don't recall. I never have observed it if I have, I don't remember, to be truthful. That happened '49—now, I have slept since then, I don't remember that.

Q. Have you ever had an occasion, then, to refer to any written franchise agreements in connection with either of those stores?

A. No, I have not.

Q. Has anyone from Brown Shoe Company ever had occasion to refer you to any provisions of any written contracts in connection with those franchise stores?

A. No, huh-uh, no-o-o.

No one from Brown Shoe Company has ever told him that he could not carry an outside or conflicting line of shoes. As to whether anyone from Brown ever asked him to stop carrying an outside or conflicting line of shoes, he said, no—maybe their salesman might have come out just trying to sell me their shoes, but anybody with authority from Brown has never told me what to carry.

A salesman would try and sell the witness his own line, but he didn't ever, in connection with that, make any attempt to tell him that he could not stay on the Brown franchise program and carry any outside or conflicting lines of shoes he was carrying. If he had, the witness wouldn't be on the Brown plan.

The witness' policy as to determining what lines of shoes he carries is based on which is the best shoe for him, which means that if he thinks he can make more profit on a certain shoe, regardless of whether Brown makes it or somebody else, if he feels it is the best shoe

for him, for a net profit viewpoint, he will buy the shoe.

The term "line concentration" means something to the witness. He said, he tries to buy what is best for him. When he has a certain line of shoes, he tries to buy the shoes so next year he can continue to advertise that line. It will mean something in the community.

He does not purchase the group life insurance offered by Brown franchise program. He purchases the group business insurance available for Brown franchise dealers [fol. 405] for the store at Dallas, not in Idabel. That is a small town-customers he has to stick along with them.

. . . . .

The witness had a franchise store at Benton, Arkansas from about 1952 or 1953 until about 1958, when they sold that store. They took the money from that and went into the Dallas store. There was a hospital in Benton, and there was some demand for Clinic oxfords, so he bought Clinics for that store. He started buying them about 1953 or '54 and as far as he knows, the owner of the store there is still buying them. The witness needed some shoes like that in Idabel, he wasn't big enough to handle as many shoes as they required buying. So the witness just sends off to his manager who bought the store, tells him what he wants in certain shoes, and the manager gets the shoes for him from the Juvenile Company. Juvenile would not sell to him directly in Idabel. The salesman would sell to him if he would buy a certain amount of shoes. The town wasn't large enough for the witness to buy that many Clinic oxfords there, so he couldn't buy them. He does not recall the amount of shoes required to be bought but he knew he couldn't handle them in Idabel, the town was too small. He was a Brown franchise store in Benton at the time he carried Clinics. No one from Brown attempted to tell him that he could not carry Clinics while on the Brown program. Juvenile does not have any distribution in Idabel at this time.

[fol. 406] The witness has purchased shoes from Deb Shoe Company. Several years ago, when Deb came out with the little fancy heel out and round toe, he bought some shoes from them for the Idabel store. They were real hot shoes. He does not remember whether the Idabel

store was on the franchise program at that time. He quit buying Deb shoes because he didn't need them. He couldn't fit them. The shoes got to where they wouldn't sell. No one from Brown ever told him he could not buy shoes from Deb Shoe Company in connection with the program. If they still sold, the witness would still be carrying the Deb shoes.

At one time in Idabel he bought a few Freeman shoes, but he doesn't know if he was a franchise store then or not. It was early and he does not recall. He quit buying Freemans and took Crosby Squares to replace them. That is the shoe he carries now.

The witness does not believe he has ever had occasion to buy Weyenberg men's shoes. They did not have the acceptance that he needed. He had Crosby, just didn't need the shoes. He likes Crosby, that's why he shifted to them.

He does not believe he ever bought any shoes from the Huth-James Company or from Leverenz. He does not believe he has ever heard of them.

#### Cross-examination.

The witness stated he purchases Florsheim men's shoes which run from \$20 up in price. He usually buys them in Idabel about \$20 to \$24. He uses some little better shoes here in Dallas, some little higher price shoes. Crosby Square men's shoes run from about \$15 up to \$18. They have some less than that, but he usually sticks to the \$15 to \$18. That is retail price, what they sell for. He buys mostly flats from Jolene. He buys them because he can buy practically the same shoe as Brown for a little less money. They retail the same price—he is making a little more net profit. He carries Crosby Squares because he likes the shoe and does well with it.

[fol. 407] Brown didn't help him too much in establishing the store in Idabel because he already had the store. He converted the dry goods store into a shoe store. He was running that when he first went on Brown. He first went on Brown when he opened the Benton store. He used some of their store planning and also their accounting system. He liked their field men's services. The field



men know more about what goes on, like if you're sitting in Idabel, then you don't know what selection is good in Dallas and they helped him out like that.

Brown has extended credit to the witness. He has a loan with them now, when they bought the store in Midwest City, because his partner could only raise so much money. He could have raised the rest. They borrowed it from Brown. At any time he could pay the money off if they want the money. It would be better for his partner to have the store paid out. He didn't have any difficulty getting the loan from Brown. That was in this last store in February.

Salesmen from different divisions of Brown Shoe Company usually come about three times a year. The Buster Brown man usually comes in about three to four times a year. They do not spend quite a bit of time with him when they come in. The fieldman visits him about twice a year. Usually nothing much takes place. He visits about two or three hours and is gone. If the witness has any problem they sit down and discuss them. Here in Dallas it's a different story. The witness is not here and he understands the man comes down and is looking out for the witness' interest. He may help with a buying guide, or make suggestions to the manager about the windows or interior of the store, things like that, just to help them out. The same thing happens when he visits the witness. He makes suggestions, ways that may help business, interior, windows or things like that, or if the witness has any problems as far as accounting or like that, he will help.

The witness is a very satisfied customer of Brown.

[fol. 408] Redirect examination.

The loan to him is not in any way tied with the purchase of Brown brand shoes. If it was, he would never accept it. He doesn't need the loan, he can pay it off at any time. He wouldn't accept any loan if it had any strings attached. Brown did not make any attempt to attach any strings to that loan.

The witness assumes he can leave the franchise program any time he desires. That is the understanding he has. No one from Brown ever told him differently.

## Examination.

By Hearing Examiner Creel:

Q. Before you became a Brown franchise store, before your first one did, I take it you talked with somebody from Brown about it, did you?

A. Yes, Mr. Copeland, who is a salesman, very good friend of mine, he informed me about it.

Q. Well, what do you understand your obligation would be toward Brown if you became a Brown franchise store?

A. Well, I assumed that they would—I don't know what obligation, what prompted me was two things: I was wanting to use their accounting system, which would help me, knowing where I stood from month to month, and two: I was wanting to use their fieldmen. If I wanted to branch out, I was wanting to use their fieldman in helping me secure the location and also help me when I had the location. I wanted to check—had a manager—check that store and inventorywise, I'd like to use their fieldmen in doing that. That was the two things which prompted it.

Q. Yes. Now what, if anything, did the Brown man tell you would be expected of you?

A. Well, he told me that I should use as many shoes of theirs as possible. But I told him I would use their shoes so long as their shoes made me money, their lines—well, that is what I would use, and if I found somebody else's line that would make me money, I would buy it. That [fol. 409] was the understanding before I went on because I would, well, there was no strings attached—I wouldn't go into a deal where I was tied hand and foot and had to do certain things because I just don't believe in that.

Q. Well, did you expect that you were to give Brown preference though, or just what was it he said you were expected to do for Brown?

A. Well, he didn't say much of anything on that line. He talked to me over on the other side, what it would do for me, how it would help me.

Q. Did you read the contract you signed?

A. Not too much.

Q. Well, did you read it, I mean did you read all of it?

A. I glanced through it. As long as I could leave when

I wanted to, I didn't see where it was too much—where it was too much pertinent, if I didn't want, I could always get out.

Hearing Examiner Creel: All right, sir.

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RAYMOND CARL ADAMS, JR., called as a witness for the Respondent, testified as follows:

Direct examination.

The witness resides in Killeen, Texas. He has a family shoe store, Adams Shoe Store, on the Brown franchise program. His store has been on the program since 1950. He had the store prior to 1950.

The shoe lines he presently carries, Brown and other lines, are: Buster Brown, Robin Hood, Air Step, Roblee, Pedwin, Old Main Trotters, British Walkers, Clinics, U. S. Keds, Acme Boots, Red Wing, Daniel Greens, Night Aires, Best Custom Craft. He carries Life Stride, Hush Puppies, Edwin Clapp, and Capezio, and Viner's flat and casual type shoes also.

He does not believe he signed any written agreement with Brown. They sent him some sort of agreement after he had supposedly gotten on the program. He didn't see a franchise man for a couple of years. The agreement [fol. 410] that he refers to, the way he understood it, was to confine certain lines to his store.

The lines that he carries today are not those he carried in 1948. He was a little operator then. He had \$215 in the bank and he bought from jobbers and anybody that would sell him. He tried to get Busters, but his credit rating wasn't good enough. That was about 1948 when he first tried to get Busters and he finally succeeded in getting them in 1949.

The witness buys canvas footwear, Keds and items of that nature directly from U. S. Rubber. He has not checked as to what the price would be, whether he bought it through U. S. Rubber, or invoiced through Brown. He bought from U. S. Rubber before he went on the program and he continues to do so. He has no other source of rubber goods supply.

The term "line concentration" means something to the witness. In the first place it takes less time with buying. He buys too many lines as it is, but when you deal with all these manufacturers and are paying bills and buying from different salesmen, it is quite time-consuming, and he feels that concentration on certain lines is a lot better for a small merchant. He did not adopt the line concentration policy of stocking shoes because he had no experience in the shoe business when he went in, except department storewise. Since he has been in the shoe business, he has not necessarily adopted a policy of line concentration. He buys what he thinks will sell. That is the criteria he follows. No one from Brown Shoe Company has told him that he could not carry lines of shoes that are not Brown shoes.

. . . . .

[fol. 411] The population of Killeen is 23,337. It is near Fort Hood, but that figure does not include the population of the Army post. He has a potential population in his trade area of around 60,000.

The witness does not carry group life insurance under the Brown franchise program. He does not carry the group fire insurance or business insurance risk under the Brown franchise program. He carries that locally. He has used the architectural services at one time. He followed it, not a hundred percent—he made some changes.

He has handled Clinics, from Juvenile Shoe Company, since about 1958. No one from Brown Shoe Company has made any attempt to have him discontinue carrying Clinics. He does not carry Deb shoes. He special orders a few pair a year. No one from Brown has ever told him he cannot carry Deb shoes.

He does not carry Freeman shoes. No salesman from Freeman has ever come into his store to sell him Freeman shoes. The witness has never carried Weyenberg shoes. No salesman from that company has ever called on him to sell their shoes. The Massagic line, a division of Weyenberg, is sold in Killeen, in a men's store. Freeman shoes are shown in Killeen in two or three places, a couple of Army stores and one men's store, a haberdashery. The

witness has never heard of Huth-James Shoe Company or Leverenz Shoe Company.

[fol. 412] Cross-examination.

The witness has three regular employees in his store other than himself. He carries Old Main Trotters. The retail price of these shoes is from \$11.95 to \$12.95, with one handsewn loafer that is \$9.95. He carries their full line, and sold about 200 pair last year. He carries British Walkers also. These are men's shoes, selling from \$24.95 to \$28.95. Red Wing is a work shoe line, carries Wellington engineer boots, jump boots, things of that nature. He carries their full line. He also carries Acme. That is the Wellington boot. Most of it is Western-type.

Night Aire is a ladies' slipper line, and Daniel Green is house shoes. Custom Craft is a ladies' dress shoe, high style, \$20 and up. He carries Edwin Clapp men's shoes, selling for \$24.95 and up. Also, Capezio, theatrical type shoes, ballets, tap, toe, and some flats.

The witness has Lujano, an Italian import, from \$4.95 to \$12.95. It is a woman's shoe. He sold about 400 or 500 pair last year.

Viner is a casual flat, between a teenage flat and old ladies' shoes. It is a middle-age type shoe. It sells for \$6.95 or \$7.95.

His store is a family shoe store. Dividing the shoes in his store into three categories, men's, women's and children's, he carries most of each of those categories in Brown shoes. The witness signed a Brown franchise contract, he went on the plan in 1950. The potential population of the trade area of the town in which he is located is about 60,000. There are no other Brown franchise stores in that town. There are no other shoe stores carrying Brown lines. There is a department store in the town on the Wohl plan.

The name of the Brown field man who visits his store is Ed Smithers. He comes about twice a year. On his visit he makes up a buyer's guide, which is a guide to go by to use as pairage, which is by departments, size runs. It is helpful in buying stock, restocking a store. It says where they have sold and the amount of pairs they have

[fol. 413] sold, based on the previous year's figures. The field man helps him fill it out. The field man doesn't fill it out, but helps the witness to do so. On these visits he stays about a day, sometimes a day and a half.

Redirect examination.

By Mr. Burke:

Q. In regard to this franchise agreement, do you have occasion to refer to that?

A. I haven't looked at that, it's been in my safe, I guess—I haven't looked at it in ten years.

Q. Has anyone from Brown ever called it to your attention?

A. No.

Mr. Burke: No further questions.

Examination.

By Hearing Examiner Creel:

Q. Do you use the phrase, "confined to lines to my store"—I am not sure what you said about that phrase, and also I am not sure what it means. Was that a phrase somebody used in talking to you? Was that your understanding of what you had to do or what was it?

A. My understanding was that they would—in other words, actually those shoes were not in Killeen, that I would have those exclusively.

Q. In other words, when you became a Brown franchise store they wouldn't sell those shoes to anybody else in your town, is that it?

A. Yes, that is it. I understand it doesn't always work in some places, but it has there so far.

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AUBREY A. FOSTER, called as a witness for the Respondent, testified as follows:



### Direct examination.

He lives in Gilmer, Texas, which has a population of approximately 4500. He estimates his trade area would include a radius of about 50 miles. There would be 75,000 to 100,000 people in the area. The witness is in the shoe [fol. 414] business. He has a shoe store, Foster Shoe Store, in Gilmer. He opened the store on August 19, 1937. The credit man for Brown Shoe Company agreed to give him about 60 days with 5 percent, if he would agree to pay half the opening order. He got the store opened, 15 or 20 days late, he met that particular time, and that is as much financing as he got. His store became a Brown franchise store in 1940 or 1941, probably 1941. The witness doesn't have a written franchise agreement and doesn't know anything about one.

As to brands, he carries Brown Shoe Company, H. C. Godman Company, Florsheim Shoe Company, Daniel Green (house slippers) and Craddock-Terry Shoe Company of Lynchburg, Virginia, Home and Abroad (from Boston) and Buskins. He carries, in the Brown line, Roblee, Pedwin, Air Step, Smart Aire, Robin Hood, Life Stride. In canvas and rubber footwear, for a while he carried Kedettes in the playshoes, but he cut Kedettes, they didn't make them narrow enough for his trade. He went in the Red Ball line called Summerettes. He carries Summerettes and Keds in the boys' tennis shoes, and some from B. F. Goodrich. He orders U. S. Rubber footwear directly. There is no difference in price between those three suppliers. He obtains about the same credit terms from all of them. He does carry Buster Browns. He believes that Red Ball is a division of U. S. Rubber.

The witness buys group life insurance through the Brown program, but not group business insurance. His bookkeeper is an insurance man, and he carries all of the insurance on a report and looks after it, so that all the witness has to do is send in a check. He has compared the cost of his business insurance as he carries it locally to what it would cost if he obtained it through Brown, and he doesn't think there is much difference.

As to whether anyone from Brown Shoe Company ever told him he could not carry an outside line or conflicting

line of shoes, the witness said, nobody tells me that. No one from Brown has ever told him that he must get rid of an outside line of shoes. No one from Brown [fol. 415] has ever told him that he must carry a certain line or brand of shoes.

The term "line concentration" means, to the witness, the less amount of lines you can handle in their business gives fewer duplications. A traveling man comes in with a line of shoes, you may forget what patterns you have, and you will duplicate it too often if you buy too many lines. They find that it does not pay to buy too many lines if you can concentrate. Increasing the number of brands he carries, by buying, conflicting brands, will not increase his volume.

. . . . .

The witness purchased some Clinics one time from the Juvenile Shoe Company but he didn't like the way they fit and he just didn't buy any more. It has been 8 or 10 years since he made the purchases. He was on the franchise program when he purchased them, but they didn't know about him buying them and he didn't ask them. He does not think they would have said anything about it. The salesman possibly attempted to sell him Lazy Bones children's shoes, but he doesn't remember, it's been so long. Juvenile does not have distribution on Lazy Bones or Clinics in Gilmer.

[fol. 416] He has never purchased any shoes from the Deb Shoe Company. They were carried in Gilmer last year, he doesn't know if they still have them.

The witness never purchased any shoes from the Freeman Shoe Company, because he never had any occasion to. They never called on him. The last fellow that called on him with Freeman was an old buddy that he used to work for in Wichita Falls. He came to see the witness as a friend. Freeman had an account there. Naturally the witness didn't get them. That account was Kurtz store, a men's wear store. The fact that another brand line is already being carried in Gilmer determines whether to carry the line. In a town that size you don't carry your neighbor's brand.

When he was buying for other people, he purchased from Weyenberg Shoe Company, but never for himself. When he went to Gilmer from Houston in 1935, he bought some Weyenbergs for the Marshall Company there. That was not a franchise, just a department store, with a shoe department. Weyenbergs are carried in town row, but he doesn't know who carries them. He has not purchased Huth-James Shoes since he has been in buisness, but he knows of them and he bought shoes from them one time, when they were called Modern Miss, a long way back, for another firm. That would have been 1935 or 1936. He has never purchased shoes from the Leverenz Shoe Company, and he is not familiar with the line.

#### Cross-examination.

The witness carried a few Home and Abroad shoes. He doesn't have any this year. They are a make-up, high style line, that run from about \$12.95 to maybe \$19.95. He sold about 250 to 300 pair a year when he handled them. Craddock-Terry has Fashion Miracle Tread and Natural Bridge, young ladies shoes, from \$9.95 to \$10.95. They make lots of young ladies' shoes for all age groups. He carries quite a few of their shoes in walking shoes. They are very good on slip-lasted shoes, wedges. That would be \$9.95 to \$10.95. He likes them very much. He carries a Bus-[fol. 417] kins shoes in a playshoe and sandal and a few of their Honey Bug house shoes. That is in a price range of \$3.98 to \$5.00, a low line.

. . . . .

#### Examination by the Hearing Examiner.

The witness carries some conflicting lines of shoes. For example, Craddock-Terry would conflict with his Air Step line a little bit, but he picks the ones he thinks are the best buy. He said, for example, Air Step comes out with a line of slip-lasted shoes, I am not in the shoes business for Brown Shoe Company or Craddock-Terry, or anybody else—I am in for myself—and they come out with a line and I had to turn Air Step down on their slip-lasted shoe because I had to sell them at \$10.95 and I could sell Craddock-Terry for \$9.95.

The witness liked their last, the way they fit. He knows how to fit shoes, and he goes by the way the shoe fits. He carries just as few brands as he can in order to make money on them.

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E. A. MONDAY, called as a witness for the Respondent, testified as follows:

Direct examination.

The witness resides at Batesville, Arkansas, and is in the shoe business. He has been in the shoe business since about 1921. Up until 1931, he was with his father in the retailing of shoes. They had a clothing store. Then in 1931 they purchased a bankrupt stock of shoes. That is when he went into the shoes business for himself in Batesville. He still has a store in Batesville, the name of which is Monday's Shoe Store. It is on the Brown franchise program. He guesses they went on the Brown franchise in about 1935, but he can't remember exactly.

Q. When you went on the Brown franchise program, did you sign any written agreement?

A. I signed some kind of paper.

Q. Did you have occasion to refer to that paper?

A. No, uh-uh, I haven't seen it since I signed it, don't reckon.

[fol. 418] The witness also has a half interest in a couple of other stores besides the one in Batesville. They are located at Conway and Newport, Arkansas. He does not participate in the management of those stores. The lines of shoes carried in the Batesville store are: Roblee, Buster Brown, Life Stride, Robin Hood, a few Johansen, Florshaims, Godman, Buskins, Pedwin, a few of the Scout shoes, plus Air Steps and Clinics.

As to whether Brown has ever told him that he could not carry an outside line of shoes, the witness said, not in my life. He has never been asked by Brown to stop carrying an outside line of shoes. As to what determines the shoes he carries, he stated that he had sold Brown

shoes early, all along, and just liked them way back there. He likes the line and has stayed with them.

He carries some canvas and rubber footwear, mostly U. S. Rubber Company. He buys a few rubber goods from LaCross. He orders U. S. Rubber direct from U. S. Rubber Company, but it is invoiced through Brown. The price he receives on that method of buying is the same price he would receive if he ordered directly and if it were invoiced through U. S. Rubber.

Line concentration to the witness means help about his books for purposes of inventory as the main thing. It has nothing to do with the brands he carried.

. . . . .

[fol. 419] The Clinic line shoes which he carries are manufactured by Juvenile Shoe Corporation. He has carried those for about 6 or 7 years. Not a word has ever been said to him by anybody from Brown asking him to discontinue the carrying of Clinics.

The witness has never handled any shoes manufactured by Deb Shoe Company. As to whether a salesman from Deb had ever called on him, he said that at one time evidently a little store had closed, they quit the shoe business, the Deb people came up and wanted to sell the shoes to him, but he couldn't take them because they were too conflicting. Brown did not tell him that he could not take them. The reason that he didn't buy them was that, like Life Stride and Buster Brown, they're just about all the same patterns, and he advertises on those lines and hates to pull in new lines and try to advertise on that too. It might kill the other one. In other words, it was his business decision.

He has never carried any Freeman shoes. A Freeman salesman has never called on him. He carries a few Weyenberg work shoes. He has never carried any of their dress shoes. He is not familiar with the Massagic or Port-Ped line and the salesman has never tried to sell him that line of shoes. The witness has never heard of Huth-James shoes and has never carried any shoes manufactured by the Leverenz Shoe Company. He has never had a salesman call on him from the Leverenz Shoe Company.

## Cross-examination.

The witness has a half-interest in the Monday-Powell Shoe Store in Conway, Arkansas, and that is a Brown franchise store, too. He doesn't think that he has signed a Brown franchise contract there.

In the Batesville, Arkansas store he carries a few Johansens. That is a casual, low heel specialty shoe retailing for about \$10.95. It is a woman's shoe. He also mail [fol. 420] orders a few of the higher grade novelty styles. He did not sell too many of those last year because the style ran out. His wife wears them all the time and she mail orders them.

The witness also has Buskins and carries a pretty good bunch of them. He thinks he sold more than 500 pair last year. They had a little cloth shoe which he bought a lot of instead of U. S. He could not tell how many Buskins he had sold last year other than the canvas shoes.

He does not carry the full line of Clinics, but about three patterns. They are slow movers. He sold about 100, maybe 200 pair more than last year.

Besides himself and his wife, he has 4 other employees in the Batesville store. His approximate turn over in pairs of shoes in that store last year was around 9,000 or 10,000.

Q. What is the Brown fieldman's name who visits your store, the Batesville store?

A. Barnett, now, Sam Barnett.

Q. How often does Mr. Sam Barnett visit your Batesville store?

A. Well, I haven't had him, fieldman, I guess he's been there—might have him one time, come through one time to see us all.

Q. A year?

A. About once a year.

Q. Does he talk to you when he comes?

A. That is what he comes for, I reckon.

Q. What does he talk to you about when he gets there?

A. Well, first one thing, whether you need to clean up, something like that, to reduce—

Q. (Interrupting) Does he—

A. (Continuing) —the stock.

Q. Sir?



A. Some of your stock, old stock, something like that, keep your stock clean.

Q. He tells you that you have——

A. (Interrupting) No, he advises you to.

Q. Advises you to get rid of some stock?

A. Old stock, yes.

Q. He advises you to get rid of some brands of shoes?

A. No, his own—told us so we can buy some more new ones, see?

. . . . .

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[fol. 421] ALLAN B. STEPHENSON, JR., called as a witness for the Respondent, testified as follows:

#### Direct examination.

He resides at Greenville, Texas and is in the retail shoe business. He has personally been in that business for about 21½ years. His father has had this same store for approximately 45 years. The store is called Stephenson's Shoes, Incorporated and is located at 2719 Lee Street, Greenville, Texas. The population of Greenville is a little over 19,000. The witness participates in the management of the store and has since October of 1948. His father operated the retail shoe store in Greenville from February, 1916 with a man, he came over from Waxahachie and opened a shoe store there at that time. The witness does not know the date of the Brown franchise, but he and his father were reminiscing the other day and he thinks it's been a little over 35 years.

The lines of shoes which they presently carry in Greenville are: in men's shoes, Florshiem, Roblee, Pedwin, Red Wing workshoes and Acme Boots; for ladies, Naturalizers, [fol. 422] and Life Stride; Robin Hood and Buster Brown children shoes; and Daniel Green house shoes, some cushionized Bellaire arch type shoes, Viner Brothers loafer line, some shoes from the Graham-Brown Shoe Company and Autry Rubber Company, U. S. Rubber Company footwear, which would include Keds and Kedettes, and quite a few Ripon slippers and Lujano women's casuals, an

Italian make. They also carry Hush Puppies by Wolverine, that is one of the mainstays. They carry a few of their work shoes too. They carry Blum house shoes, another line of house shoes.

The witness did not know if there was a written franchise agreement in connection with their shoe company. There may have been one a long time ago but neither he nor his father has seen it in years and years. Brown Shoe Company has never told them that they could not carry an outside or conflicting line of shoes. And Brown has never asked them to stop carrying an outside or conflicting line of shoes. Brown has never told them that they must carry any certain Brown line or lines of shoes. They have always carried Brown's major line of shoes but that was because they thought it was the best shoe value in America. That was his father's decision, since he has been carrying all those lines or their predecessors for 40 or 45 years. Now, the witness makes 99 percent of the decisions. He does not consider his father semi-retired because his father still does some of the book work. There is another man associated with them who does most of the buying. The witness usually helps.

As to what the term "line concentration" means to the witness in terms of shoe retailing, he said, we all know the way the trend is in the shoe business today, if you spread yourself too thin you can't show variety in one line. If you pick a pattern or two in this line and pick a pattern or two in that line, the first thing you know you know you have a whole houseful of shoes and nothing you can sell. So we find by concentrating our efforts on our main lines, we can do a much better job of merchandising because it is becoming quite a job to figure out what to buy on the number of lines we carry. If you spread it [fol. 423] out even thinner, it would be a much more difficult job. We are all in it to make money, that is how we feel we can make money, by concentrating our efforts.

They try not to carry duplicating patterns in different lines unless they feel they can get a wide price spread. A good example is their Florsheim and Roblee lines. If they get a Roblee shoe, which is a Brown Shoe Company shoe, and Florsheim, International, if that Roblee is too close to the same pattern as the Florsheim shoe, it will

hurt the Florsheim and that is true of your Pedwin and Roblee. In other words, if they conflict. Whereas if you have a different price category, several different price categories in the two lines, it makes it easier to sell a man. If you show him three shoes with a dollar difference, you have to go into the rigmarole why there is that little bit of difference.

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[fol. 424] To his knowledge, their store has never purchased any lines from the Juvenile Shoe Company. Not since he has been there. The Fashion Shoe Store across the street carries Clinics.

They have never purchased any shoes from the Deb Shoe Company because they just never felt any need for it. They can buy all they feel a need for, that they can merchandise properly, from other sources. At one time they talked to them—they had another account in the town at that time and they were at their height.

The witness has never purchased any shoes from the Freeman Shoe Company. A salesman called on them a number of times and he did not have an account in town and was trying to sell them. But their line of shoes is right between Roblee and Florsheim and it would just be adding another several thousand dollars investment which the witness didn't feel was necessary at all to do the shoe job he wanted to do. They had no place for them. Brown Shoe Company in no way affected their decision in that matter. They told the Freeman Shoe man no of their own accord.

They have never purchased shoes from the Weyenberg Shoe Company. He did not know whether or not they had been called on by Weyenberg salesmen. As close to Dallas as they are, there is not a week that goes by without 3 or 4 salesmen coming in, but they have never felt any necessity to look at the Weyenberg line. The witness is not at all familiar with the Huth-James Shoe Company. Nor is he familiar with the Leverenz Shoe Company. He has never seen Calumet or Lake Line shoes, manufactured by Leverenz.

### Cross-examination.

His father started in the shoe business approximately 45 years ago, and they have had a Brown franchise store for approximately 35 years. Florsheim is their highest priced men's shoe. In effect it is a different price line. [fol. 425] It is the price line above Roblee, and any other Brown's men's shoes.

The Lujano casuals are a line of ladies' Italian footwear. They make a year-round line of shoes and they're all actually made in Italy and imported from Italy. They are a very opened up type of ladies footwear that is more or less a rage at the present time, and have been for several years. Lujano does make shoes for the fall and winter, but they don't buy any of them. Real opened up type casuals, flats and wedge heels. The price is about \$5.99 in their flat-heeled casuals to \$10.99. Their store doesn't handle any comparable American shoe.

The Blum house shoe is a popular low-price line of men's, women's and children's house shoes. It is an old house, been making house shoes since 1886, something like that. By house shoes the witness means bedroom shoes, better women's slippers, children's felt slippers, house shoes, men's opera type, just something you'd step into—bedtime, bedroom shoes. The price range of those is from \$1.99 to a maximum of around \$5.99. They carry a full line of men's, women's and children's. Blum is a very comprehensive line of popular priced footwear, somewhere around 120 to 150 patterns.

Ripon is a Knitting Company, actually nightwear. Possibly Muckluks is a more familiar term. It is a type of bedroom slipper that is all wool with possibly a little padded sole, principally for wintertime wear, and more like a sock with a sole on it to be used for men, women and children. The price range for them is \$1.99 to \$3.99, in that area.

The witness had mentioned the name Red Wing. It is another old shoe manufacturing house in Red Wing, Minnesota, that makes primarily men's work shoes, boots, hunting boots and boys' hunting boots and shoes and work shoes. They will run from \$10 to \$15 in their work shoes and on up to \$20 to \$25 in some of their real top grade hunting boots.

The witness said they attempt to stay away from carrying any conflicting lines, and to a great extent they accomplish that objective. In times gone by they have carried various lines, using one as an example, Selby Arch Preserver shoes. His father used to carry them but it was a price line of shoes they couldn't merchandise properly and get the money on, make a turnover, and after all that's what they are in the business for, so they just quit carrying them. The lines they carry in addition to Brown complement or fill in those areas where Brown does not provide the shoes.

A Brown fieldman visits their store a couple of times a year. When he visits they usually have a general discussion of business. The fieldman apparently has studied the reports that they send to him on a monthly basis and he will occasionally advise them that they are carrying too many shoes in a particular category to be getting the proper turnover in them and actually bring to their attention the things that they need to correct in order to make money. The witness would not say that the fieldman is a merchandising expert, but he is an aid in some ways. He said, actually I think that any of us that have been in the shoe business any length of time are aware of possibly what he brings out, but by having someone outside your firm bring it to your attention, you possibly will attempt to correct some mistakes you made where you might let it ride along 2 or 3 years without correcting it.

The witness is familiar with the term, "calling sizes." When they start to reorder on shoes, usually two of them will work together, and one will call the sizes, the other will write it down. You usually have a size schedule there that shows all the sizes and widths of whichever type of shoe it is, whether it is men's, women's, or children's, and you know from your record that a certain shoe is selling, you want to reorder, but you don't want to duplicate the sizes you have possibly in the wall. One of you will go to the wall, and the other will have the size pad. He will call the sizes you have on hand with the style number and color and the name of the shoe. You go a lot by the name of the shoe. He will in turn look at the shoes in the wall, he will look at the sizes for the shoe. When you go to reorder, where you don't have

[fol. 427] any sizes or want to buy one pair, you can tell from looking at this sheet of paper what you have on hand and you know from experience what you need. This is a pretty common practice. Nearly an every day practice in shoe stores, or it should be.

Their technique in attempting to properly merchandise their store gets the same result. In other words, he uses a cardex system on his women's shoes, for example. That tells him each day what shoe is sold, not the size particularly, but the stock number. If he sees a shoe during this week period, they have sold 15 or 20 pairs of it, he knows he had better get some more, so at the end of the week they will call sizes on that particular shoe and re-order, if that is a reorder shoe they know they can get. The card index is one of the aids they receive from the Brown franchise program. They purchase it but it is one that was available. They bought it from the manufacturer, the Cardex Company. But it was available through the franchise office so that they could use it to properly merchandise the shoes. In other words, it is a merchandising aid. They use the same system for their Florsheim men's shoe, that same book and everything else. It is not restricted to Brown shoes or anything else—whatever we feel the need. It is a convenient record or method of bookkeeping in merchandising.

Taking one line as an example, Brown Shoe salesman visit his store about 4 times a year. For each salesman, each line will call on you approximately 4 times a year. He carries two women's, two children's and two men's lines of Brown. So approximately 24 times a year he will have Brown shoe salesman coming to the store. He wouldn't say that you see one about every two weeks. He saw 4 last week and he won't see them again for 3 months.

. . . . .

[fol. 428] One time they used the architectural services offered by Brown. That was about 10 or 10½ years ago, when they moved into the present location. Mr. Moore, of the planning division of Brown Shoe Company in St. Louis, made a general layout and schedule of the front. They didn't use it in its entirety, but as a guide, for remodeling the business they moved into. The cost of remodeling



was \$7,500 to \$10,000. The remodeling was primarily based upon the architectural suggestions of Mr. Moore, along with some of his own. If these suggestions had not been available, the witness is a graduate engineer, and he thinks he would have done about 99 percent of it himself. He possibly would have visited other stores and gotten ideas because actually that is all they got from Mr. Moore. Mr. Moore has studied it, he knows how to develop and lay out a store, which would be to their advantage. When the witness did their house, he drew the plans himself. He had a local architect lay out the foundation. In a little town architects usually do not charge a certain percentage of the cost. Usually you agree on some figure. Everything is a little more personal. If he hadn't used Mr. Moore, he'd been in the store about 3 years at that time, they visited other stores to get an idea about what they wanted, although they did use some of his, there were ideas they could have picked up from their International competitor across the street, just good display items and the arrangements of the store, but likely the witness would have done all of it himself.

They have never had an occasion to request credit from Brown Shoe other than just your normal credit that you get when they ship an invoice, 30 days, no extra time or additional credit or a loan or anything of that sort. Brown has never provided them with any neon lighting or sign, or advertisement for their store, that they have not bought. They did not have any large outside sign. Florsheim gave them one big 6 or 8 foot sign which [fol. 429] they have hung outside the store, but the only sign they ever got from Brown are small units to go inside the store, things they have bought such as the Buster Brown clock on the back of the wall, something like that.

#### Redirect examination.

Lujano casuals conflict with some Brown branded line of shoes in the sense that the same patterns for the same cost could be obtained from Brown Shoe Company. Life Stride came out this spring with a line of casuals that are a similar type and construction and all, but they told the Life Stride salesman that they just liked the other

shoes better and that was what they bought. When they buy the Lujano casuals they bought a couple of the same type shoes in the same price category from Brown. Where they have about 24 styles from Lujano, they bought 3 patterns from Life Stride. They were a little bit different and they felt that they could properly merchandise them in addition to Lujano. Essentially in that area they have their need satisfied by Lujano, although Brown could sell them the shoes.

Brown has a branded line that carries the same patterns for the same cost as Hush Puppies. The Pedwin Division and even Roblee make shoes similar that would sell to the same man for the same purpose, but again they feel like the Hush Puppies do a little better job for them and consequently they buy them in lieu of one of the other lines. Brown has never told him that they couldn't do this or tried to threaten him or coerce him to keep them from doing that in any way.

#### Recross-examination.

There might possibly be a certain particular appeal about the fact that the Lujano shoes are made in Italy. The words "Made in Italy" sometimes has a meaning to a woman. The witness buys them primarily because of the construction and the patterns and so forth. It is just a hot line of shoes. It has a lot of eye appeal, price right, fit, wear and sell.

[fol. 430] Hush Puppies are made of pigskin. It is a man's casual. They make all types. They make them in boots, sometimes slip-on styles, oxford styles. They all have a thick balloon crepe sole, cushioned crepe sole. They're slip-lasted type shoes, very lightweight, water repellant, scuff-resistant. They fit, wear, and feel like you're barefooted. He thinks the name is quite appropriate and he carries a full line of them. Last week they were carrying around 270 pairs some odd pair representing oh, 10 styles. Brown could supply them with a comparable style. They have a series in there. The Pedwin line is comparable to sell to the same man for the same purpose. Brown has a few pigskin shoes and then they have one out of nylon material that was very comparable. It wasn't the same material.

May 16, 1961

SAMUEL MONROE LEWIS, called as a witness for the Respondent, testified as follows:

Direct examination.

He lives in Muskogee, Oklahoma. The population of Muskogee is approximately 38,000. His business is retailing shoes. The names of his shoe stores are B. & B. Shoe Store and L. & H. Shoe Store. B. & B. Shoe Store is on West Broadway, L. & H. is 417—(here the witness was interrupted). In 1948 he acquired a third interest in the B. & B. Shoe Store. In 1955 he acquired full interest so that he owns it completely at this time. They opened the L. & H. Shoe Store five years ago in August, and a year ago last March he acquired the full interest of the L. & H. Both of these stores are connected with the Brown franchise program. The B. & B. became associated with the program, in August, 1933, and the L. & H., in August of 1956. The witness did not work in the B. & B. Shoe Store prior to the time he acquired an interest in it. So it was a franchise store when he acquired the interest.

[fol. 431] The witness has been retailing shoes since 1926. He is general manager of both stores. The brands of shoes he carries in the B. & B. Shoe Store are: Buster Browns and Child Life for children, Nunn-Bush, Roblees, and Pedwins for men, Air Step, Life Stride, H. C. Godman, and Miller Barefoot Freedom for women, Daniel Green house shoes, and U. S. Rubber for canvas footwear. He also carries Viner Brothers shoes, and H. C. Godman nurses' oxfords and Form Tread nurses' oxfords, made by Welco Shoe Corporation.

The L. & H. Store carries: Robin Hood and a few Graham-Browns for children. Crosby Square and Pedwins for men, and Life Stride and Smartaire for women. They have H. C. Godman, old lady comfort shoes and nurses' oxfords, and some Graham-Brown flats, some Viner Brothers and Saifers in B. & B. Shoe Store. The kind of Tober Saifers he carries mostly are women's flats and growing girls. The brand name of the H. C. Godman nurses' oxfords is Clara Barton.

The witness doesn't have a written franchise agreement

for the B. & B., but he does have one for L. & H. As to whether he knows the contents of that written agreement, he said, I have read it, I know part of it. I haven't read it since I signed it in 1956. He has never had any occasion to refer to it. Neither Brown nor anyone from Brown ever referred him to that written agreement since the time he executed it. No one from Brown ever told him that he could not carry an outside or conflicting line of shoes. No one from Brown ever asked him to drop, or stop carrying, an outside or conflicting line of shoes. No one from Brown ever told him that he must carry any certain Brown or Brown lines.

The witness stated that he carries U. S. Rubber canvas footwear. In the L. & H. he also has some Batas, out of Belcamp, Maryland. He has no reason to believe that he gets a better price on canvas and rubber footwear from U. S. Rubber by virtue of being a franchise dealer. He can get the same terms from other rubber companies. He has investigated this.

[fol. 432] The term "line concentration" means something to him. He thinks concentrated lines are naturally better for the merchant. They'd be better off if they stay to more concentrated lines. You don't overbuy and overlap in your buying, the result of which is generally overstock and large markdowns. The effect of this on profit is a loss of money.

. . . . .

As to Clinic and Lazy Bones lines of shoes made by Juvenile, the witness just knows what they are. A salesman from Juvenile has never called on him. The Clinic line is in town.

He purchased shoes from Deb Shoe Company several years back, about 1956. His experience with those shoes [fol. 433] wasn't very good. The shoes didn't fit and he requested to return them and they wouldn't accept them back, said it was one of the top fitters, and that is the last time he has bought shoes from Deb. He sold those particular shoes on sale for a dollar, which cost, he believes, \$4.75 or \$5.25.

He has never purchased any shoes from the Freeman Shoe Corporation. That line is carried in town at S. & Q.

Clothiers. That is a retail men's clothing store.

As to whether he has ever purchased any shoes from Weyenberg Shoe Company, the witness had purchased possibly two single pairs for himself. He does not carry the Weyenberg line of shoes because he decided to put in Nunn-Bush instead.

He has never purchased any shoes from Huth-James. He has never heard of the company. He never purchased any shoes from Leverenz Shoe Company. He has never heard of them.

There are probably 38 shoe outlets in Muskogee.

#### Cross-examination.

Muskogee is a town of approximately 38,000. As to how many of the 38 shoe outlets are family shoe stores, the witness said, they have the B. & B., L. & H., Marshall's and Sears and Roebuck, which has family shoes, J. C. Penney carries family shoes, Kahn's Boston Store, the Hub, and the Famous, and there is an outlet at a Shoe Center and Felts. Now, those are all family operations, carry men's, women's and children's. Of those, the ones which are not department stores, but are family shoe stores such as the witness', are: B. & B., Marshall's Lee's, L. & H., the Shoe Center, and then there is another low price self-service store, and Felts. They must be close to 75,000 persons in the immediate trade area.

The Child Life shoe in the B. & B. store is an arch support type shoe. Nunn-Bush in the B. & B. store retail for \$18.99 to \$26.99. That is a man's shoe. The Miller Barefoot Freedom is a woman's shoe. The kind of a customer that usually buys that shoe are generally people that [fol. 434] have to, the bone surgeons and chiropodists and people with bad feet. It sells from \$12.99 to \$17.99. The Viner Brothers shoes he carried are mostly sports flats and dress flats. They retail from \$6.99 to \$7.99. He sold about 700 pairs of those last year with both stores.

His total pairage last year was between 7,000 and 8,000 pairs at L. & H., and the B. & B. was probably about 9,000 to 10,000 pairs. He does not carry the complete line of Viner Brothers shoes. He carries about five patterns. They probably have 100 different patterns. He carries just a few Graham-Browns in his L. & H. store. Most of

them are low-priced children's shoes, low-priced growing girls' flats.

The women's category of shoes is the most important in his L. & H. store. Approximately 48 percent of his sales are to women in that store. Children's sales run around 9 percent. He carries Tober Saifer flats. They run from \$6.99 to \$9.99. He does not carry their complete line, but just what he picks out to fit in with his operation.

These salesmen from Brown Shoe Company call on him each year: Smartaires, Life Stride, Air Step, Roblee, Buster Brown, Pedwin, and the salesman for Robin Hood shoes. They will average at least one visit every 4 months, sometimes every 2 months. The Brown fieldman calls on him an average of about 4 times a year. The salesman from Brown makes one visit for both stores, where the same Brown lines are in each store.

At one time he carried Deb shoes. He bought approximately 200 pair. This was not just one order, he had bought them twice. He made two different purchases but he would judge he bought somewhere in the neighborhood of 150 to 200 pair, more or less.

The witness is aware of the architectural service provided by Brown through their franchise program, but he hasn't used it. He has used the window service provided through the franchise program for the B. & B. This was probably in 1955 and 1956 and 1957. He has not used other window trim services since he stopped using the [fol. 435] Brown. Now he does it himself. He can use that same trim over that he used then but he could make his own windows and buy his own materials and be just as effective. That is what he does in the L. & H. store. The approximate cost for doing that per year in the L. & H. store runs about \$125.

He gets free signs from Brown for advertising the lines, the talkers, and just what the average manufacturer puts out. He can't say whether they come through the Brown franchise program or whether they come through the company. These are cards for the windows, window trim cards, line identification cards, no neon signs.

They carry group insurance from George Capon, and he understands it is sponsored by the Brown franchise



program. He has life insurance, a group policy, which comes out of Prudential. It is sponsored by the Brown franchise program. And the fire insurance, and public liability and robbery insurance. The witness is sure that the insurance he gets through the Brown franchise program is cheaper than if he had to get it through other sources.

#### Redirect examination.

The window trim signs that the witness testified that he received from Brown are made of paper. He receives similar signs in connection with other brands of shoes than Brown brand shoes. It is a common practice. He paid Brown for the window trim service that he received. It was between \$400 and \$500 per year.

In connection with the Deb shoes that he ordered a couple of times, no one from Brown ever told him that he could not carry Deb shoes or that he must get rid of the Deb shoe line.

Salesmen from other shoe companies call on the witness in the normal course of his business. There are not many days that go by that somebody doesn't call on him. Sometimes he looks over their lines at that time. He feels free to buy their line if he chooses to. He attends shoe shows and he shops and compares the different lines of shoes and the quality and the style. He feels free to buy any line that he chooses if he can pay for them. Up to [fol. 436] this point, he is the one who determines what shoe lines he carries. The guide he uses is just his good judgment.

The witness was asked by the Hearing Examiner at the time he signed this franchise agreement what his understanding was of what Brown expected him to do to carry out his end of the bargain. The witness said, it was—naturally it was to sell their products and not actually to carry lines that really would conflict. I would naturally believe in concentrated lines, and ever since I have been in the shoe business, I have been sold on Brown shoes, for the men, women and children. I feel that concentration is the success of probably any shoe store, family shoe store.

### Recross-examination.

The window trim service in his L. & H. store he did by himself. He has never hired any type of any service for L. & H. at all, but what they buy and put in their windows has cost approximately \$125 a year. When he had the same service from Brown, he had to pay between \$400 and \$500. It was a lot more elaborate window trim. As to whether the Brown people did the work, he said, they laid it out, the window trim service did.

Brown has never extended any credit to him, nor any loans.

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WILLIAM S. COLEMAN, called as a witness for the Respondent, testified as follows:

### Direct examination.

The witness resides in Sherman, Texas. He is not any relation to Alvie Ray Coleman, of Vernon, Texas. He is in the shoe retail business in Sherman, Texas, and owns a store there. The name of that store is Coleman's Shoes. He has owned the store about 4 years, since the first of July. That store is operated under his direction and supervision. It is on the Brown franchise program. The store was on the franchise program when he bought it, and he continued it on the program.

[fol. 437] The witness signed a written franchise agreement with Brown Shoe Company. He is pretty sure the date of the instrument was July 1st, 1957. He has not had any occasion to refer to that agreement. Neither Brown nor any representative of Brown have referred that agreement to him. He has previously been under the agreement, and he has been under that agreement with other stores for quite some time. He put a store under their franchise agreement in 1940 in Miami, Oklahoma. He was the owner of that store. He has never in the period from 1940 when he went into business for himself, had one of their agreements referred to by him, or anyone representing Brown to him.

The witness carries the following lines of shoes in his Sherman store. From Brown Shoe Company he has: children's lines, Robin Hood and Buster Brown; women's Naturalizer and Life Stride; and in their men's Roblee and Pedwin. He also carried some Smartaires. Outside of Brown, he has: the Hush Puppy, made by Wolverine Shoe Company, and Jolene and Orchid which is Tober Saifer. In weather footwear he has U. S. Rubber Company and Mishawaka Rubber Company. Their brand name is Summerettes and Jets, U. S. Keds. He has Texas Boot Company cowboy boots. He has a few Connolly shoes for men. Those are the shoes that he is presently carrying in his store.

In previous years the witness has carried other lines in that store, during his ownership from 1957 to date. He had shoes from Pan American Modes. Those are Caresse. And then Home and Abroad Shoe Company for two seasons. They don't have a brand name that he used. It was just his label put on it.

Brown has never told him that he could not carry an outside line of shoes. They have never attempted to tell him. His judgment determines what line of shoes he carries. He has bought Brown shoes over the years because he has felt that they were good values. His association with the company has always been a very pleasant one in all angles, credit and otherwise. And when he feels that there is some competitive line that would be [fol. 438] advantageous to him from a profit standpoint, or from a public acceptance standpoint, to one of their lines, he has bought this other line.

For canvas and rubber footwear he carries both U. S. Rubber and Mishawaka brands. The prices are identical. He buys U. S. Rubber through the Brown franchise program, invoiced through Brown. He buys those through a U. S. Rubber salesman.

\*     \*     \*     \*     \*     \*

He knows the Juvenile Shoe Corporation. A salesman of that firm has never called on him to sell him shoes in Sherman. Probably years ago a salesman called on him in Miami, back in the forties. He does not believe that he bought shoes from them, he doesn't recall. Since

he has owned and operated the Sherman store, from 1957 to date, a salesman from Juvenile has not called on him. [fol. 439] Their Clinic shoes are sold in Sherman, Texas, by Price Department Store. It is a general department store, the shoe department is leased out.

The witness has never carried any shoes in Sherman manufactured by Deb Shoe Company. He has carried them a previous time. He was in partnership in Vinita, Oklahoma, previous to going to Sherman, and they bought some Deb Shoes there one season, about 1955. They only bought them one season, because they weren't successful with them. A Deb shoe salesman has never called on him in his Sherman store. The line is carried in town by Price's Department Store.

The witness has never carried any shoes manufactured by Freeman Shoe Company at Beloit, Wisconsin, for his Sherman store. A salesman from Freeman has never called on him in Sherman. The shoes are now carried some place else in Sherman, after a lapse of being out of town for about a year. They had a leased department which went out because of the store closing about a year and a half ago. That was the S. & Q. Clothing Store. They now have leased the men's shoe department in this same department store, Price's Department Store, effective since the first of this year. He understands the Freeman Shoe Company owns the department.

The witness carried Freeman shoes at one time in 1947 and 1948 in a store in Fort Smith, Arkansas. It was a corporation, Patrick Shoe Company, Inc. It was operated as a Brown franchise store at that time. Freeman had a leased department up the street and so the witness quit them. The witness said they quit Freeman voluntarily because of the lack of service that Freeman would give them where the salesman would favor their own department up the street. When they were able to get plenty of merchandise from other sources, they quit. That was their own decision. The Brown Shoe Company had nothing to do with it. They carried several other men's lines. That store did a large men's business. They had Edwin Clapp, Florsheim, Ross Shoe Company, Connolly Shoes and Bob Smart shoes in that same store. It was on the Brown franchise program at the time they carried those

[fol. 440] shoes. The witness was Vice President of that corporation in charge of management. He operated the store, managed the store and did the buying.

The witness has carried shoes manufactured by Weyenberg Shoe Company, who make Massagics and Porto-Peds. In this same store in Fort Smith they carried a few Portage shoes, while that store was on the franchise program. He has never carried any of the Weyenberg brands, in his Sherman store. He hasn't had need for them. The salesman has called on him. That was his own business decision.

The witness thought that the Huth-James Shoe Company is the company that has become H. & A., meaning Home and Abroad Shoe Company. He has heard of the Huth-James Company. A salesman has never called on him since he has been in Sherman. The witness has never bought shoes from the Leverenz Shoe Company of Sheboygan, Wisconsin. He doesn't remember if a salesman has ever called on him from the Leverenz Shoe Company for the purpose of selling him shoes.

The witness has compared the prices and credit terms he gets from U. S. Rubber and Mishawaka on canvas and rubber footwear and any that have ever been offered to him have been identical.

#### Cross-examination.

The witness has been in the shoe business for himself since 1940. Prior to that time he was employed in department stores. Most of those years were in the shoe business.

In his Sherman store he carries Connolly shoes for men. Those that he carried were in the price range from \$16.95 to \$19.95. He does not have many of those in his store. He has practically quit buying them because he hasn't found them too satisfactory from the selling standpoint. He doesn't suppose that he has over 24 pairs at the present time. He has carried a stock of up to about 50 or 60 at a peak. That was two years ago.

[fol. 441] Pan-American Modes are women's style shoes. Caressa is the brand name. It is a rather high style shoe. At the time that he bought them, they were \$14.95. They have recently gone to the \$16.95 bracket. One reason he discontinued them, he hadn't sold shoes in that price bracket, so he quit. The Connolly shoe is a men's dress

shoe. He carried the Caressa in the spring of 1959 through the fall of 1959, and the spring of 1960. He carries just a few little stray pairs today. He is not buying any.

Home and Abroad is the same type, about the same category as the Caressa. He tried those, feeling he needed another line of shoes in this type and price range when he wasn't successful with Caressa and they went to \$16.95. He tried this other brand as a replacement for Caressa for two seasons, and then have dropped them because he hasn't been successful with them. The witness mentioned the Jolene and Orchid. They are both brand names of Tober Saifer Shoe Company. Those that he buys are flats and sport shoes, women's sport shoes. Their price range is \$4.99 to \$8.99. He carries quite a few of those. He has been handling them in this store for three years.

The witness relies on the sale of his Brown shoes for his store's operation. Most of the lines he has been discussing were complimentary lines, the feeling that he needed some other types. Those that were not successful were dropped for that reason. The last two brands, the Jolene and the Orchid, he continues to carry because they are successful in the store and they would not be considered complimentary lines because his flat and sport shoe stock for teens and women will consist 75 to 80 percent of those two brands.

Fort Smith back in 1947 and 1948 was about 50,000 or 55,000. The witness mentioned Edwin Clapp. It is a high priced man's shoe. When he was in Fort Smith he quoted 2 years—they were there 5 years 1947-1952. At that time Edwin Clapps were in approximately the \$20 to \$25 range. They sell for \$30 to \$35 today.

At that time Florsheim were from \$16 to \$20. Today they run from \$20 to \$30. At that time they were certainly a high-priced shoe. The Ross shoe is a very inexpensive man's shoe. He doesn't know that they still exist. It was a division of the old J. W. Carter Shoe Company in Nashville.

The witness also mentioned the Portage brand at the Fort Smith store. They were competitive in price and type largely to Roblee. They carried both. They had Freeman and Roblee in that price range, and then when they had trouble with Freeman, they dropped the Freeman



line and bought some Portage shoes to give them that other line in the same price field. They carried quite a few Portage shoes at that time in Fort Smith.

During the years between 1952 and 1957, prior to entering into his present store, the witness was entirely away from the shoe business. Then he went back into the shoe business in this partnership that he mentioned just previous to coming to Sherman, one at Vinita, Oklahoma. The one in which he bought Deb Shoes. He was in that 2½ years, 1955-1957. He went directly from that partnership into the Sherman store.

When he went into his present store Brown Shoe Company did not loan him any money. He did not remodel the store when he went into the Sherman store. It was a Brown franchise and was 8 years old. He hasn't done any major remodeling. There was no Brown neon signs at his store. He has a large sign which has his name in large type and then there is a small—he has three of their brand names on that sign. But it was put there by his predecessor and he didn't change it. He left those and put his name about it. He has three sales people in his store in addition to himself.

One Brown shoe salesman for each of the Brown lines visits his store. They have other lines that are competitive to their brands who don't call on the witness. The frequency of their visits varies a great deal, sometimes as few as 4 times, and it may be as many as 8 depending on how close they live and how often they go through. There is one who lives in Oklahoma, for example, he is further away and the witness will see him not over 4 times [fol. 443] a year. There were others that are driving through and they stop and visit for a few minutes. It's hard to say how many times he sees them. He sees one field man from Brown each year. The frequency will vary. Sometimes he'll go a year without seeing him. As far as any transactions of any business or anything like that, never more than twice a year. He might come through and stop off, like a salesman, have a cup of coffee and visit a few minutes, but as far as any business transactions, twice a year would be the most.

He uses the Brown accounting system. His fire insurance, is carried with Capon, in St. Louis, and has been

handled through Brown. It is billed to him, not through Brown, by the firm itself. That is the public liability and fire insurance, theft and tornado. The witness and the young man who is associated with him up here have the group life insurance with Prudential. That is billed by and paid direct to Prudential, but it is through a Brown franchise arrangement. He hasn't compared the cost of these various types of insurance with the cost of other companies. He believes that it is cheaper than other companies.

. . . . .

Q. Now you stated, sir, that back in July of 1957, you did sign an agreement with Brown Shoe Company, franchise agreement?

A. Yes, sir.

Q. What was your understanding of that, of your obligations under that agreement, sir?

A. Well, I can't offhand say just exactly what the agreement—how the agreement is worded. I thought the gist of it, and I had—we never referred to it.

[fol. 444] Q. Well, you just mentioned you knew the gist of it. What is the gist of that agreement, what is your understanding of the gist of that agreement?

A. Well, Brown Shoe Company agrees to furnish us certain things such as the accounting system that you suggested there. We are supposed to have the advice and services of the fieldman, if that helps, and we in turn are supposed to buy—now, I say, "We are supposed to," what I mean is according to this agreement that we buy merchandise in the price field and the type from Brown—not exclusively, but—well, all I can say, everything being equal.

Q. But primarily from Brown?

A. Yes.

Q. Is that correct, sir?

A. Yes.

Redirect examination.

. . . . .

The sign in front of his store, Coleman's Shoes is his own sign. It was the sign that was there at the store and

he bought the leasehold improvements which that would come under, and he had the name changed. He paid for that.

He mentioned dropping lines not being successful. He has done that from time to time. He has never dropped a Brown line for that reason. He has cut one or two divisions some, to such a low volume that it might be negligible, but he hasn't just actually eliminated the line or dropped it. As to whether the witness would feel free to do that if business conditions warranted it, he said, I would drop them.

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[fol. 445] GLEN HENRY COOPER, called as a witness for the Respondent, testified as follows:

Direct examination.

He lives in Corsicana, Texas and he owns a retail shoe store, called Cooper & Spurlock. The population of Corsicana is approximately 22,000, and he estimates the population in his trade area would run between 45,000 and 50,000. He acquired his shoe store by buying out his partner in October of last year. He and his partner had purchased it together in 1953. It was an existing store at that time owned by Hill & Shipe.

The witness' experience in shoe retailing started at the high school age when he was working as an extra salesman on the floor for Hill & Shipe, and he has been in the shoe business since that time with the exception of about two years during the war. That works out to be approximately 28 years. His early experience was in the same Hill & Shipe shoe store in Corsicana that he referred to.

As to the brands of shoes he presently carries in the store, he has from Brown Shoe Company, Naturalizer, Life Stride, Roblee, Pedwin and Buster Brown, and some outside lines, including Hush Puppies, some Viner loafers, and a few sport shoes from Zebheo Moccasin Company. He also carries Wide West houseshoes, and some U. S. Rubber goods. In addition he carries Dr. Scholl's arch support shoes, the sandal type shoes. They are principally ladies' shoes.

He does not have a written franchise agreement.

The canvas and rubber footwear which he buys from the U. S. Rubber Company, he purchases directly from the salesman that calls, who works out of the Dallas area. He is billed through the Brown Shoe Company on these goods. He does not get any better price on that footwear as a Brown franchise dealer than if he were not. He has discussed that with the U. S. Rubber Company salesman and he does not get a better price on it.

[fol. 446] The term "line concentration" to him means more profits at the end of the year, and concentrating on fewer lines which proves to be just a lot more profitable in the stores. This is because you concentrate on fewer lines and you can buy shoes and fit more people as they come into your store because you are concentrated instead of spreading your inventory over a bunch of different lines—you can just do a much better job of merchandising. As to whether a line such as Hush Puppies conflicts with any shoe carried by, or available from Brown Shoe Company, the witness said that he frankly believed Hush Puppies were an individual line. It possibly takes away some sport shoe business that he would otherwise buy from Brown. He does buy some Brown shoes similar to Hush Puppies.

Brown Shoe Company has never told him that he could not carry an outsider conflicting line of shoes. No one from Brown has ever asked him to stop carrying outside or conflicting lines of shoes. No one from Brown has ever told him that he must carry any certain Brown line or any lines of shoes.

The witness is a Brown franchise dealer. The store, Hill & Shipe, when they opened it in 1946, was a franchise store at that time, and it has been on the franchise plan ever since.

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[fol. 447] He has never carried any lines from the Juvenile Shoe Company. They are carried in the town, but he has never carried them. His competitor, Big Four Shoe Store, right up the street carries them. In his size town the fact that a branded line of shoes is carried elsewhere in the town has a very definite effect on his own

decision as to whether or not to buy the shoes. Usually in the town the size that he is doing business in, one branded line is sufficient. There are so many other lines, which would not be conflicting and that would be just as good, and therefore he wouldn't necessarily want the same brand that his competitor was carrying.

He has carried Deb shoes. They were carried at the time Hill & Shipe owned the store, in about 1948 to 1950. [fol. 448] He was manager of the store at the time. At the time the store was opened, Mr. Hill had bought the shoes in one of the other stores, and they were a very good line of shoes and they bought them at that store too. The store was opened in 1946, the first Debs were probably in 1948. They were carried in the store from about 1948 to 1951. The store was a franchise store during that period. As to the reason for ceasing to carry Debs, the witness said, when Debs came out, they were in a line by themselves. They came out with some nice low-heeled shoes, pretty colors, and they fit good and it proved to be a very profitable line. But when one company in the shoe business comes out with a new model it isn't long until other companies have something just as good and a lot of times the salesman will even buy a couple of pair and mail into his company. It is worked that way all over the country in the shoe business. The sales began to fall off some, and they dropped the line, and one of the main reasons was that they were sold by a competitor up the street, while the witness carried them. Neither Brown nor anyone from Brown ever told him that they could not carry Deb shoes. He has never purchased shoes from the Freeman Shoe Company. They are carried in town at the Big Four Shoe Store. He has never purchased any Weyenberg Shoes because he is just not familiar with them. He cannot recall whether their salesman ever called on him and he was unable to say whether they were in town.

He does not recall ever having been called upon by a salesman from the Huth-James Shoe Company. He is not familiar with the line of shoes. He has never been called on by a salesman from Leverenz Shoe Company, and he is not familiar with that line.

. . . . .

[fol. 449] The witness obtained a loan from the Brown Shoe Company, as a partnership, Cooper & Spurlock. He believes it was made in 1953. He also has an individual loan at the present time. The prior loan has been paid off. The existing loan is for \$16,000. As to his obligation in connection with that loan, it is just a simple 4 year loan. He has a schedule of payments, five and a half percent interest. Brown has never tried to tie in that loan with the purchase of its shoes in any way whatsoever. Nor have they tied it or attempted to tie it in with the nonpurchase of outside lines. There are no strings attached to the loan in any way of purchases of any kind.

#### Cross-examination.

Hush Puppies do not conflict with any line the witness carries from Brown Shoe Company. The Viner loafer which he carries do conflict with Brown lines. The witness said there is a conflict there, but they are not obligated to buy Brown Shoe Company shoes. If they think some other company has a better product, maybe in one special shoe or pattern, they go ahead and buy it. It is the Robin Hood line of Brown Shoe Company which conflicts with the Viner loafers. He does not carry all the patterns offered by Viner. He just carries the penny loafer. Last year he sold approximately 300 pairs of those shoes. His overall pairage in the store was a little over 12,000 pairs.

The witness could not say whether Hill & Shipe signed a Brown franchise agreement when they went on the Brown franchise plan because he was just the manager and wouldn't know for sure. He was the manager when they opened the store in 1946 in Corsicana.

As to his conception of the obligation that they owed Brown Shoe Company for services and benefits they receive under the Brown franchise plan, the witness said it is just a good plan—good basic ideas. They find in reading different articles that the percentage of failures are far smaller where you have a set plan to follow like [fol. 450] that. As to what they had to do to receive these services and benefits, he said, he automatically buys their shoes and automatically they get better service. There isn't any written agreement of any kind. Where they have



the shoes, all these different merchandising aids are available to you at no extra cost.

The Clinic line of Juvenile Shoe Company is carried by the Big Four Store in Corsicana, Texas. That is a Famous Shoe Store. It is three doors up the street from his store. That store has at least four regular salesmen.

When the witness was buying Debs back in 1948 to 1950 they also sold to a competitor up the street, the Big Four Shoe Store. The reason he bought the Debs was that they came out with new different styles. At that time they were a style leader.

The individual loan which he got from Brown Shoe Company was in the year 1960. The loan to the partnership to which he belonged was for \$13,900. He believes the interest rates on that loan were the same as the loan that he has now. Interest rates have been advanced some and it is possible that it could have been five or five and a half on it. The loan was for 4 years and it was paid as agreed. It would have been in 1957 that it was terminated.

Getting back to the Deb Shoe Company, Brown came out with styles similar to those carried by Deb when he was buying them. It was within a year's time.

He has used the window trim service offered by the Brown franchise. At the present time he is not using it. They had it for a couple of years during their partnership. A lot of times they would use it for a year and then maybe drop it for a year, and then come back a year with it. A lot of times they can build the displays over and they will be just as effective. He used the architectural services of Brown when he remodeled the store last fall. The cost of the remodeling was approximately \$5,000. The way he went into it he did not bother with all the new plans. He didn't know what it would have cost him [fol. 451] if he had gotten the architectural services from another source. He wouldn't think it would make a lot of difference. The cost of that remodeling was not paid out of the money that he got in the loan from Brown. It was paid out of the profits of the store. He paid half of it and the landlord paid half of it.

The witness has a large neon sign outside of his store. It has Roblee Shoes on it. He got the sign from Brown

Shoe Company. He paid for having it installed and he paid the freight on it, and he got the sign free. He estimated to get that sign from another source would cost a couple of hundred dollars, maybe two fifty. He has no other signs in the store at the present time which were given him by Brown. He does get paper signs all the time, just like all companies send them. As to other neon signs, at times he had Evans houseshoes. But through the Brown franchise plan he has only one small Robin Hood sign the salesman gave to him 3 or 4 years ago.

He uses the accounting service offered by the Brown franchise program, also the inventory assistance of field men, and he does take insurance, life, fire and public liability, theft, through the Brown franchise program. As to whether it is cheaper to carry insurance through that method than it would be from other sources, the witness said, that he has had local men in town tell him that they could meet the price on it now. But they couldn't better it.

Brown salesmen from each of the lines that he carries visit him. All of them will make at least two trips a year, some of them will make four trips a year. The Brown field man visits him too. He is in the store at least twice a year, sometimes more often.

#### Redirect examination.

As to what determines the brand of shoes that he carries and how he decides to buy them, the witness said, you usually have in your store what you think is the most profitable lines and again you can buy any outside branded line that you want to. He makes an analysis of his experience, profitwise, with his lines. It has a lot of effect. He said, we have had outside lines in the store, quite a number of times, and we find that year in and year out for quality, fit and value that we just can't beat the branded Brown lines that we carry in the store. He would certainly drop a Brown line if it didn't perform satisfactory. He wouldn't have a bit of hesitation about that. There are no strings attached whatsoever with regard to his ability to leave the Brown franchise program. He is free to leave at will.

The earlier loan that he and his partner received from Brown was not tied in with the purchase of Brown shoes

in any way. Nor was it tied in any way with the non-purchase of other brands of shoes.

Referring to the Deb Shoe Company again, when it came out with the novel styling, other shoe companies than Brown also copied their styles. After they were out 6 months, every company had copies. This happens in the shoe industry. If I. Miller has a real hot line in an expensive shoe, you're liable to see it next season down in the \$6.98 bracket, where their shoe originally sold for \$25.

With regard to the window trim service, the witness used from time to time, there was a charge for that. He doesn't remember what the charges are on it.

He does not think that the Roblee sign that he carried was related in any way to the fact that he was a franchise dealer. They were doing a pretty good business in men's shoes, and it would help to pull in extra traffic since Roblee today is a nationally advertised line of shoes. They see them in Life and your ladies' magazines. It is left up to the salesman, maybe he will have an account that isn't a Brown franchise store. If the line is proving profitable and building, it wouldn't be unusual to put it in the store outside of a franchise store. The Brown field men did not have anything to do with his getting the sign. Other neon signs are available from other manufacturers. For example, he has had small neon signs from Night Aire, houseshoes, and they used to have Selby Arch Pre-[fol. 453] servers in the store and they had neon signs from them, and he believes at one time he was carrying Nettleton loafers for ladies and he had a small sign from them. He also knows of other cases, even though he hasn't carried such signs in his store. It is a common practice of shoe companies to put these neon signs out to their outlets.

#### Recross-examination.

The purpose of the \$16,000 loan from Brown Shoe Company was to buy out his partner and pay him off. The check went to his partner for half of the store.

GLENN L. EDWARDS, called as a witness for the Respondent, testified as follows:

Direct examination.

The witness resides in Paris, Texas. He is in the retail shoe business there. He has owned the Famous Shoe Store there since 1936. He is active in the management of it. He also owns another shoe store at the present time. He bought Olmstead's Shoe Store at Tyler, Texas, February 6th of this year. The Famous Shoe Store in Paris is on the Brown franchise program. It became affiliated with the program when he bought it. He did not enter into any agreement with Brown Shoe Company with respect to that store. He continued the name of the store he bought in Tyler as Olmstead's. He did not enter into any written agreement with Brown when he acquired that store.

The various lines of shoes carried in the Paris, Texas, store include, in the Brown line, Naturalizers, Life Strides, Smartaire, Robin Hood, Buster Brown, Roblee and Pedwin. In other lines he has men's Florsheims and ladies' Dickersons Daniel Greens, Dr. Carpenter children's shoes, Child Life children's shoes, Red Wing work shoes, Wolverine Hush Puppies, Justin boots, Acme boots and Donn-McCarthy, which has two lines, Enna Jetticks and one lesser price line, Heel Huggers. He also has Nunn-Bush shoes.

[fol. 454] In his Tyler, Texas, store he has Tober-Saifer, Deb-Towners, Nunn-Bush and Revelations. He purchased Robin Hood last night. He also has Buster Brown, Roblee, Pedwin, Air Step and Life Stride. He has Enna Jetticks in that store, and, of course, Italian sandals in both stores. In Tyler they are the Lujano brand and part of them is another brand that Tober-Saifer sells. Also in the Tyler store he has Acme boots, Red Wing bootshoes and Justin Oil-sealed boots.

As to who or what determines the shoes that he carries in the Paris or Tyler stores, he said the main thing is merchandise that will make a profit. Sometimes he buys it and doesn't make a profit, but that applies to all lines. If a shoe he buys does not make a profit it is just closed out. What determines that—when you come to the end

of the season you have a lot more of one particular line that you haven't been able to merchandise, and there are many pairs of this line left that haven't been selling, why they just quit handling it. He would feel free to do that with any Brown line he is carrying if he is not making money on it.

The witness was with Bowman Brothers in Illinois until 1928, and in 1928 he opened his own store at Denton, Texas. He was there for five years. That store was operated by him with his partner on the Brown franchise program. The Illinois store was a brand new store, one of the first ones put in in Illinois in 1925, which was a Bowman's franchise store, one of the first stores they had.

Brown has never told him that he could not carry an outside line. Brown has never asked him to stop carrying an outside line of shoes and Brown has never told him that he must carry any certain Brown line of shoes.

The witness had forgotten to mention that he carried Mishawaka rubber goods, which is Red Ball Jets, out of Mishawaka, Indiana. That is a branch of U. S. Rubber Company or something of the same type. He also carries some Autry rubber goods out of Dallas, Texas. He also has some Hood rubbers in his Tyler store and has rebought them this spring. No one from Brown had urged him to carry any U. S. Rubber products. He carried U. S. [fol. 455] Rubber products from the origination of his first selling up until about three years ago. He discontinued U. S. Rubber Company because they sold the merchandise at a cut-price proposition to competitors and he could not make any money out of it, so he quit it, as much as he loved the Company and loved the product. One of the best products ever made, but he couldn't make any money. He is discontinuing what is in the Tyler store for the same reason.

As to whether he made any price comparison between the cost of U. S. Rubber versus the Mishawaka production, the witness stated that they were all in the same price. In fact, his understanding is that the same corporation owns both of them, but he might be wrong. He buys those directly from Mishawaka.

The "term line concentration" means to the witness, if you concentrate on certain lines, lots of times the lesser

lines, the fewer lines you have, you can concentrate on them, it is going to be more profitable. It keeps him from overloading his stock, buying too much. If he overbuys he loses money, and he is in the shoe business to make money. If you overbuy you just have to get your money out the best way you can. This refers to mark-downs.

\*     \*     \*     \*     \*

[fol. 456] He has used the window trim service connected with Brown franchise program. He has been using it about [fol. 457] eight years. He dropped out one or two years. He pays for that service.

He participates in the group life insurance program under the Brown franchise plan and has since 1933. He also carries the casualty insurance, the liability policy, in St. Louis, but not the group fire insurance. He carries other insurance locally. He used to carry the group business insurance until 1947, but the insurance he carries now locally is less costly than what he was carrying at that time. It is substantially the same insurance. There isn't too much difference.

The witness had a loan from Brown Shoe Company in 1947, when he opened a store in Abilene. The loan was just so much a month to be paid off over a period of time. There was no tie-in or requirement in connection with that loan regarding the purchase of Brown shoes. He also received a loan in February in connection with the Tyler shoe store. He used the funds from that loan to help him finance the purchase of the Tyler store. That loan is payable over a period of time according to a schedule of payments. There is no tie-in in connection with that loan that would require him to purchase any Brown shoes.

In connection with his participation in the Brown franchise program there is no obligation on his part to buy Brown brand shoes. He is not tied to the Brown franchise program for any period of time. He could quit at any period of time at his own desire.

The witness has never carried any Juvenile Shoe Corporation shoes. He has had a salesman from Juvenile call on him in connection with his recent shoe store operations in Tyler and Paris, but the salesman just came by to see him. They didn't come by to sell him the shoes because



competitors already have them. This has happened in Paris and Tyler both. Even though there is a competitor in the same town of the size his store is located in, it would not affect his decision as to whether or not he would stock the brand. If he had a chance to put in Lazy Bones or Clinics he would buy them today, but the Juvenile Shoe Company hasn't tried to sell them to him.

[fol. 458] He has bought shoes from the Deb Shoe Corporation for the Paris store. In fact, he had them in two of his stores. He had a store in Sulphur Springs up to two years ago which he has now sold and he had Debs in both of those stores, Paris and Sulphur Springs. The Sulphur Springs store was on the Brown franchise program. He had the Deb shoes 4½ years or nine seasons, but he does not buy them anymore because he got burned on them. He bought them four years, eight seasons straight, and it was a wonderful, profitable item, but they started taking the guts out of the shoes. When he ended up and got ready for his sale, he woke up to the fact that all he had left was Deb shoes and he just quit them cold. No one from Brown Shoe told him to quit Deb shoes. It was his own business decision. He hated the idea of quitting them because he had built up a business on those shoes.

The profitable performance of a shoe determines whether he carries it or not. If it doesn't perform profitably, you don't carry it. That is the reason he discontinued Deb.

He has never carried any Freeman shoes other than just special order. The Freeman salesman comes in to see him all the time, but it is just a friendship basis and to buy a cup of coffee. The witness has never wanted Freeman shoes. The salesman has an account in town now. The witness has other good lines that he is making money out of and he has never wanted them.

He special orders a few pairs of Weyenberg shoes. The salesman comes by to sell him Weyenberg shoes but he never buys them because he just doesn't sell a lot of work shoes. He never did buy their dress shoes except for Westinghouse Manufacturers whose representatives use those shoes for some kind of uniform wear, protective wear. They have a dress shoe with a safety toe, a special type of work shoe. This is in his Paris store.

Back about 25 years ago he carried some shoes manufactured by Huth-James. It has been over 20 years ago since he has seen a Huth-James salesman, but he used to carry the shoes. That would be prior to World War II. Since that time he has never carried any Huth-James [fol. 459] shoes and a Huth shoe salesman has not called on him. He has not carried any shoes of the Leverenz Shoe Company. A salesman has never called on him from that company.

The occasion for his making a special order for shoes is when he has a customer who wants it.

#### Cross-examination.

The witness took over the Olmstead shoe store February 6, 1961. It was a Brown franchise store prior to that. And he took over his Famous Shoe Store in Paris in January, 1936.

The Dickerson ladies' shoe in the Paris store is a conservative type shoe that is not high-style. It is a good middle-of-the-road shoe. It is actually a corrective shoe, a health shoe. They do make some dressier shoes which he carries a pattern or two of. His price range is \$20.95 and \$21.95. He carries too many of those shoes, an average stock of about 200 pairs.

Dr. Carpenter's children's shoes are advertised as self-starters. It is a good children's shoe, not a corrective shoe. They run from \$3.49 in the infant's size to \$6.99 in the larger size. That is for both boys and girls. Children that age wear both the same. He carries somewhere around 140 pairs of them. That shoe was in the store when he bought it in 1936. All of the doctors, pediatricians were very much in favor of this shoe because of the noncorrectiveness and the light weightedness of it, fitting of it, and he has carried it ever since, with a profitable operation. He had a waiting trade for it, so to speak, and it has kept that way for 20 some years.

Dickerson shoes were not in the store when he purchased it. At that time, there was another line, ladies' Health Spot shoes, which was taken away from the witness by a man from whom he had purchased the store. In June, 1938, the witness bought the Dickerson line to replace this

line that already had a developed trade, and it has been a profitable line all of these years.

[fol. 460] Child Life is a separate line from Dr. Carpenter. It is a corrective children's shoe. They make all kinds of shoes, but the only one he has had that have been profitable are the ones with the corrective feature.

Donn-McCarthy are manufacturers of ladies' Enna Jettick shoes. The line he carries in that is a basic corrective type shoe, conservative type shoe, in the same category as the Dickerson Arch Rock shoe, only in a lesser price range. The Enna Jetticks are from \$10.95 to \$12.95. He sold approximately 342 pairs of those shoes last year, because he had a 2.6 or 2.7 turnover in that particular shoe. He had 168 peak inventory.

The Heel Hugger is made by the same people. That is in the same thing, he is giving the figures together. One is the lower price and the Enna Jettick ladies is the higher priced. The other is actually \$9.95 and \$10.95. It is a health shoe. At the Paris store last year, he sold 13,000 or 14,000 pair of shoes.

In reference to the Tyler store, the witness had mentioned Tober-Saifer. In Tyler he did have 542 pairs of Tober-Saifer shoes. In the Tober-Saifer line, the witness carries the Deb-Towner flats which is the higher grade flat. They sell for \$8.99. The next grade of flats below those are just marked Tober-Saifer. The other group he has in that 542 pair is their brand name of Italian sandals. The entire line originally in the store when he bought it not unpacked was 542 pairs. He has been selling those. There is a particular market or appeal of having "Made in Italy" appear on the shoe box.

He has been in the store only since February 6. During that time sales have been good. He would say that they have sold about 4000 pairs of shoes since he has been in the store. Of course, he has had a change of ownership sale there and a lot of that was sold at non-profit, but still he has shown some good profit. The Nunn-Bush shoes were there when he took over the store. The price range in Nunn-Bush is \$21.95 to \$24.95. Right now he has somewhere in the neighborhood of 150 pair of those, and he has others bought for the fall season. Now there are about 6,200 to 6,500 pair of shoes in inventory at the Tyler

[fol. 461] store. As for the Paris store, his typical current inventory there is about 9,600 pair. Too many.

As to his understanding of the Brown franchise agreement, the witness said, actually there isn't any agreement. By having the franchise, you know, you are not protected on those lines because they will sell some other stores in the same town the lines of shoes too. But the main thing of his carrying those particular lines is because he makes money out of them. One major advantage is having the name franchise attached to your store operation, and that he gets free bookkeeping records. If it cost him money, he probably would have them printed locally because he probably could get them cheaper than he could otherwise.

Hearing Examiner Creel: I think his question is though, is what your understanding is of what Brown expects you to do in return for these things they do for you. Isn't that right?

Mr. Kaplan: Yes, sir.

The Witness: Well, probably the thing to do would be for us to buy as many pairs of shoes as——

By Mr. Kaplan:

Q. (Interrupting.) Brown shoes?

A. Brown shoes—just like if it was International or any of the other operations, buy as many of those shoes—of course, the principal reason I buy them, to be frank with you, the reason I buy franchise shoes or Brown shoes is the fact that they have got the backbone and they wear, because I devote all of my business today of good merchandise as well as making——

Q. (Interrupting.) Well, I understand that, sir, certainly.

A. Good merchandise and the shoes wear.

\* \* \* \* \*

[fol. 462] The witness borrowed money from Brown in 1947 for his Abilene store. The amount of that loan was \$12,000.00. The purpose of the loan was to stock the place and go in business. He opened that store new. It was his only sad operation. He stayed 5 years and then closed it up and moved. He also recently took a loan from Brown for his Tyler store. That was made on February 10 or

February 15 of this year, 1961. It was for \$25,000.00 and was for the purchase of the store. Buying the store means buying stock that was already there.

With reference to the Tyler store, the witness had mentioned Revelations as another line. That is a casual line of wedge heel type shoes. A good casual line of shoes that you can make money on and have soft cushion soles. They are women's all woolen shoes. He has been carrying them since he opened the store at Tyler, and has sold a good many of them. He would say that he has bought somewhere around 300 pairs at the present time. He also mentioned Sebago suede loafers. That is a good basic college girl, high school girl, grade school girl's loafer, which he sells for \$7.99. He has approximately 250 pairs.

#### Redirect examination.

The loan in connection with the Tyler store was just a matter to buy and operate the store with. He didn't have to have the loan. It was to pay the previous owner and to buy stock. Floor stock, fixtures, big neon sign on the front, and that didn't pay for all of it because he took over the obligations of account which were to be paid and which he did pay on the 10th of the month following. There might have been a couple of thousand dollars there that was surplus to buy additional stock. Shoes like Deb had been shipped in three, maybe four months ahead of time and he had these obligations. He used some of these loan proceeds to meet those obligations. Some of the loan [fol. 463] proceeds were used to pay invoices for the purchase of shoes other than Brown shoes. There was twenty-three hundred and some odd dollars of other manufacturers goods.

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EVERETT McLAIN, called as a witness for the Respondent, testified as follows:

#### Direct examination.

He lives in Alva, Oklahoma, population 5500. The population of the trade area is possibly 18,000 to 20,000. He is in the shoe business and has a shoe store called McLain's Shoe Store located in Alva. He opened it in 1948. It is on

the Brown franchise program and has been since its opening. The witness has been in the shoe business since he was 14 years old, approximately 40 years now.

In the store he carries, in Brown lines, Naturalizer, Life Stride, Pedwin, Busters and Robin Hoods. He also carries Dean's Musketeers Paradise, Cobblers, Urbanites, Jolenes, Tober-Saifer and Fiancees. He does not carry Roblee because he did not make any money out of them and quit buying them. He dropped the line last season. He has not replaced it with another line and he does not know whether he will or not.

He uses U. S. Rubber for a canvas and rubber footwear supplier. He has purchased from U. S. Rubber since 1948, and purchases through Brown. He has no reason to believe that he receives a better price for canvas and rubber footwear that he obtains through U. S. Rubber Company as a franchise dealer, than he would as a non-franchise dealer.

Q. Do you have a written franchise agreement?

A. Yes, sir.

Q. Do you refer to it from time to time?

A. No, sir, I don't even know where it is, I don't believe.

Q. Has Brown ever referred to that agreement?

A. No, sir.

Q. Never since you signed it?

A. No, sir.

[fol. 464] Brown has never told the witness that he could not carry an outside or conflicting line of shoes. Neither Brown nor anyone from Brown has ever asked him to stop carrying an outside line or a conflicting line of shoes. Neither Brown nor anyone from Brown has ever told him that he must carry any certain Brown line. He feels completely free to buy any lines of shoes he chooses, and continue to be a Brown franchise dealer.

He carries life insurance on himself through the group life available through Brown, but he does not purchase the business insurance through Brown franchise. He gets his business insurance locally from a customer of his store. He has never compared the cost of that insurance with that available through the Brown franchise program. He doesn't know what the difference is and he doesn't know if there is any saving.

. . . . .



[fol. 465] He has never purchased any shoes made by the Juvenile Shoe Company, who makes Clinics and Lazy Bones. He thinks a competitor carries both of them. He knows he carries Clinics, but he doesn't know if the competitor carries Juvenile or not. The competitor is Warrick. The fact that the competitor carries a brand name shoe does not have any effect on his decision as to whether he will carry that or not.

The witness has bought Deb shoes for 5 or 6 years, up until the present season, and he kicked them out. He is not going to buy them this season because he wasn't making any money on them, so he changed over and bought Adores instead of Debs. No one from the Brown Shoe Company ever told him he could not carry the Deb line and no one asked him to cease carrying the Deb line.

He never purchased any shoes from the Freeman Shoe Company, but Warrick, his competitor, carries some of them. He has never purchased from the Weyenberg Shoe Company. They used to be in town, but the company went broke or sold out and it isn't any business any more. They had a men's clothing outfit named Brice and Huff for an outlet.

He has never purchased any shoes from Huth-James and he does not ever recall being called on by a salesman from Huth-James Company. He has never purchased any shoes from the Leverenz Shoe Company and has never been called on by a salesman from that company.

#### Cross-examination.

He bought Adores this season and has not had any in the store yet. He bought 186 pair of them 3 or 4 days ago. The price range of that shoe is \$14.95. They are a real high style woman's shoe. He is not carrying the full line. He just picked what he wanted out of the line. The Musketeers is a flat line, flats and casual line. It retails for \$8.99 to \$12.99. He buys quite a few of those and he imagines that he sells 500 pair a year. He would say that an approximate total pairage of the whole store last year was 7500 pair, but he doesn't want to be held to [fol. 466] that estimate. Sun Cals, a California company, makes the Musketeer line. Their distinctiveness is that they are a real high style shoe. He would say that it is

a hot shoe, a real good looking shoe. Brauer Brothers Shoe Company in St. Louis makes Paradise shoes. He buys the Kittens. He just buys one or two shoes from them. They're a round toe with a little heel on them. Cobblers is a high style flat line. He buys 4 or 5 shoes from them. He picks the ones which he feels will do a real good job in his store. In each company he buys from he picks what he thinks will sell in his store, to bring a rounded out program of shoes. That includes Brown. They go in just the same as the others.

He does not find that this brings him any inventory difficulties. That applies also to Urbanites and the Jolenes and Fiancees. Whenever he feels that the Brown Shoe Company is not adequate he goes away from them. Where he feels they are, he stays with them.

With reference to the three categories of shoes in his store, men's, women's and children's, his leading line in women's is Life Stride. For children it is Buster Brown. He doesn't do much mens business, mostly women. But for the men that he does sell to, his leading line would be Pedwin.

His competitor, Warrick, which carries the Juvenile and Freeman lines, is an International store. It has mostly International shoes. It is also a family shoe store like his, and it is of comparable size.

The witness reiterated that he carried the life insurance provided by the Brown franchise program, but that he did not carry the business insurance. He does not use the Brown window trim service or the architectural service, nor does he contemplate using that in the future. He just got through remodeling and he did it himself. The sign he has outside his store just says McLain's. He bought it himself when he started the store. He uses the accounting and inventory system provided by the Brown franchise program, and finds it very helpful.

[fol. 467] In reference to the Brown franchise contract that he signed, it is his understanding that he is going to get this very helpful accounting and inventory assistance.

Q. Now, what do you feel that is your obligation toward the Brown Shoe Company in return for this very valuable inventory and accounting assistance and other valuable assistance?

A. I don't feel obligated, I don't feel obligated.

Q. Do you feel that you are, they would do this for anybody else?

A. Boy, I never thought about it.

Q. Do you remember the provisions of the Brown franchise contract?

A. No, I don't.

Q. Do you remember any of the things that you were supposed to do when you signed this contract? Did you think you were getting the services for no reason?

A. Well, truthfully, I don't believe I do, I just was going to buy shoes from Brown Shoe Company and they're going to send field representatives out there to help me.

Q. Uh-huh.

A. And they do that and I do, I buy what shoes I want from them.

Q. In other words, you were going to buy most of your shoes from Brown anyway?

A. I didn't say most, I said—no, I buy what I want from them.

Q. Would you say most of your inventory now is comprised of Brown lines?

A. That is a guess, I would say it would be 55-45, right close.

Q. Fifty-five in favor of Brown?

A. A 55 percent Brown and 45 percent another line, I would guess—that is a guess.

He thinks that he has a style shoe store. These old Oklahoma people are stylish he guesses—he sells a lot of style shoes. When the Brown fieldman visits him, they talk about and go over pairage and they find out the categories that are not producing what they should be producing. Then they talk about how they can raise them and they talk about Brown as much as they do about anybody else. If he is carrying Debs, they get it at the highest basis they can get it, and the Brown fieldmen help the witness do that. That is what the fieldman does and what he is supposed to do.

[fol. 468] The witness carried Debs 6 or 7 years. During that time every time he talked with the fieldman about his pairage and made an open-to-buy, it was just the same as any other shoe in the store. The witness decided he was

going to go into Adores because it was a little longer line. The fieldman was against it. The witness thinks that the fieldman wanted him to keep Debs for the reason that the witness was doing a good job with them. The fieldman is interested in him doing a good job.

For each of the Brown lines that he carries, there is a salesman that visits him as often as he can get him to buy something, too often he thinks. A couple or 3 times a season, if he thinks the witness is open to buy. That is not only Brown Shoe Company, that is all of them. They all want to sell.

When he opened his store he needed a little outside financing, but he didn't get any from anybody. He had a little trouble occasionally. He has never had an occasion to get a loan from Brown Shoe Company. As to any credit arrangement with Brown, he stated that he had been a little lax occasionally, a long time ago, but not recently. Instead of paying them on 30 days, he has paid some 60 and some 90 to Brown Shoe Company. They took his discount just like they're supposed to. No arrangements, whatever he could talk them out of he got, what he couldn't talk them out of, he didn't get.

#### Redirect examination.

In explaining what he meant when he said that Brown took the discount when he went over the 30 day limit, the witness said, when you have an invoice from Brown or any of the shoe companies, it doesn't make much difference whether it's Brown or another company, they give you 30 days. You get 2 percent or 5 percent at the end of 30 days. If you don't pay your bills at the end of that time they take your discount. That is what Brown did to him when he went over the 30 day mark.

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[fol. 469] GUY SHIPE, called as witness for the Respondent, testified as follows:

#### Direct examination.

He lives in Ada, Oklahoma. He is in the retail shoe business, family shoe store there. He has owned a shoe store personally since 1930. He had a partner in 1930

and still has a partner whose name is Raymond Hill. Their stores have been known as Hill and Shipe Shoe Stores. The witness has a store in Ada and Mr. Hill has a store in Ardmore, and they have a store in Norman, Oklahoma. Since they took the two stores out of the partnership, his store is known as Shipe's Shoe Store and Mr. Hill's is Hill's Shoes, and at Norman it is still Hill and Shipe. They took the Ardmore and Ada stores out of the partnership about 10 or 12 years ago. The Ada, Ardmore and Norman stores are all under the Brown franchise program. When they were operating as the partnership of Hill and Shipe, they had Norman, Ada and Ardmore stores. Under their partnership they also had stores in Waco, Sherman and Corsicana, Texas. Along about 1959 or 1954 those were Hill and Shipe stores. In 1953 or 1954, their partnership still had the Waco store, and the Sherman and Corsicana, he believes, but they may have sold Corsicana before then. All the stores he referred to were on the franchise program when he and his partner, Mr. Hill, were operating them as Hill and Shipe Shoe Stores.

The witness could not give an exact date as to when they first started buying Deb shoes, but it was back after World War II, soon after World War II, about the time Deb started in business actually. They were under the Brown franchise program at that time. They bought the Deb shoes for about 3 or 4 years. As to why they stopped buying those shoes, the witness said, we were buying those shoes at a time they were making money for us and then at a time they were not making money for us and come the time when we were selling more of them on sale than we were at regular price and we felt like we did not need them any longer. That was why they discontinued buying Deb shoes. No one from Brown Shoe Company ever told them they had to discontinue buying Deb shoes. That was a decision of his business organization. Since that [fol. 470] time they have not purchased Deb shoes. Their being in the Brown franchise program had nothing to do with discontinuing the purchase of Deb shoes.

#### Cross examination.

The witness was asked to clarify in which stores they carried the Deb shoes. At one time they carried them

in all the stores, all six of them. They no longer own the Waco, Sherman and Corsicana stores. They were disposed of at different times and he does not have the exact dates on it. Approximately, however, they disposed of Waco first, and that was about 10 years, something like 1951, then the Corsicana store about 7 years ago, and the Sherman store about 3 years ago. The bookkeeping was all done in their Ardmore store, so as far as the dates and things like that, he wasn't as familiar with that. Their Ada, Ardmore and Norman stores are still functioning.

They began selling Debs soon after World War II. As to what features about the shoe attracted them to Deb, he stated that at that time they had a shoe that no one else had in their neck of the woods. It was very popular with the young folks and it was a shoe that they bought and made money on for a while, two or three years. They dropped the line about four or five years ago. Other manufacturers came out with styles which were comparable to the Deb shoe. Brown did not come out with the type of shoe they had in the beginning, but it seems that the newness had worn off of those shoes and it was no longer acceptable. It was no longer a hot shoe. As to whether something put out by Brown was just as satisfactory, the witness said, we just didn't need the shoes any longer. Life Stride or Naturalizer from Brown did not come out with something comparable to the kind of shoes that were selling in the beginning. Later on, when their sales of Debs began dropping off they could buy them anywhere they wanted to, and that included Brown. As to whether the Deb Shoe Company actually conflicted with what Brown was offering them, he said, there might have been an overlapping. In other words, when it came sale time we had more of their shoes to sell. They could get what they wanted from Brown.

[fol. 471] They do not have a written franchise agreement with Brown. They receive some of the services from the Brown Shoe Company. They had a fieldman who visited them 2 or 3 times a year. They use the accounting service in all their stores. He has group life insurance through Brown. They also have fire and theft insurance through Brown.

Brown shoe salesmen visit them regularly from each of the divisions, 5 or 6 times a year for each division or line.



Q. I see. Mr. Shipe, what is your understanding as to what you are to do in turn for these services provided you by Brown?

A. We had no contract.

Q. No—what is your understanding, I understand you have no written contract.

A. Well, in other words, we concentrated on Brown lines of shoes because we have a family shoe store and they have, I'd say about 75 percent of what we needed to run our store.

Q. It was your understanding you would buy these from them?

A. Well, we buy what we feel we need.

Q. That 75 percent or so?

A. In that neighborhood, I should say.

Redirect examination.

Brown Shoe Company has never told them that they could not carry an outside line other than Brown. The carrying of lines is their business decision, based on what they feel they can make money on. That's what they are in business for, and that is what determines the lines of shoes they carry. The witness has never been told they must carry certain Brown lines. They feel free to buy any line of shoes they wish. That is the policy upon which they have been operating since they have been under the Brown franchise program. There are salesmen from various shoes companies calling on them from time to time, besides Brown, and they are free to buy any of their lines that they desire, and they have done so from time to time.

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[fols. 472-482]

May 18, 1961

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[fols. 483-486] GEORGE H. CROKER, called as a witness for the Respondent, testified as follows:

## Direct examination.

The witness resides in York, Pennsylvania. He is field representative for Brown Shoe Company.

. . . . .

[fol. 487] As a field representative of Brown Shoe Company the witness does not have any instructions from the company as to having franchise store people discontinue outside lines. He does not have any instructions with respect to conflicting lines. When he came with the Brown franchise division Mr. Johnston said one thing to him that has always been uppermost in his mind. Mr. Johnston said, "George, remember one thing, these stores are owned by independents and you have worked for a chain where you could go in and tell them what to do, but you cannot do it with independents because it is their stores and you must always remember that is so." And that is exactly how he feels about it, and always has. That is the manner in which he has conducted himself.

The witness was shown Commission's Exhibit 36. He recalls receiving such a memorandum from Mr. Curtis [fol. 488] shortly after June 27, 1958. In reference to the instructions set out in that memorandum, in the course of a few weeks the witness visited Shugart's and discussed the purchase of the American Girl line, which was in keeping with the program because it was shoes that Mr. Shugart felt he needed. After discussing it with him the witness agreed that he needed them too, and he bought them and he still has them. It was not the witness' purpose in discussing that subject with Mr. Shugart to endeavor to have him discontinue carrying those shoes in his store. The witness said the purpose of discussing it was to be sure that he was not overbuying, and by overbuying he would have to take markdowns and therefore would not come up with a profit. But as it was he had sufficient openings to buy for what he had in this line.

As to whether it would have been part of the witness' work as a fieldman to give him directions as to what he should do if he had been overbought, the witness said, no, sir. We analyze the situation and we recommend. He makes the decision himself. We want to see them make

a return on their investment. For that reason we recommend strongly that he should not be overbuying, not on this line or any of the Brown's lines.

Shugart's is still carrying American Girls as far as he knows. In other words, he in no way interfered with Mr. Shugart's decision to carry American Girls. He made no attempt to interfere with his decision to carry American Girls.

### Cross-examination.

The witness has been with Brown Shoe Company 7 years. He has been a fieldman all that time. He had Pennsylvania, Virginia, West Virginia, for his territory at one time. Today he has Pennsylvania alone. He had some stores in Delaware, too, at one time.

His duties as a fieldman are to observe, analyze and recommend—in three words—and he visits stores in this program periodically. He goes over their figures as far as performance is concerned and with the store owners he discusses the progress, the profitability of their business. When he says figures and profitability he is not just talking about Brown Shoe. He is talking about the total, the whole store. In other words, if a man does or is planning on carrying what he might consider conflicting lines, he will discuss it with the witness possibly. It is pretty difficult to estimate what a store is going to do just by considering only a portion of the inventory. They discuss the whole inventory.

The witness reports directly to his home office in St. Louis. As to how frequently on the average he speaks with them or writes to them, it is sometimes once a week, sometimes not as often. It is hard to say because it depends on what you are doing and actually he has been the world's worst to send in reports on certain things. He talks to them sometimes by phone, not too often. He is supposed to file monthly or weekly reports, but he has not been doing it very conscientiously. He does have the summary report from the stores that they get every month. They can look at the figures to see the progress of the stores. That goes in from the store, not from him. They like to know his observations on the operations of the

stores. The witness sometimes sends in reports. They require it but sometimes he does not send them in; it depends.

. . . . .

[fol. 501] COLLOQUY

Hearing Examiner Creel: On the record.

I just said off the record that I didn't see any particular point in calling additional Brown franchise dealers, that I would assume that most of them would testify pretty much along the lines of those that have already been called to testify.

Mr. Burke: If counsel for the complainant would so stipulate I believe it would expedite the hearing.

Mr. Kaplan: I don't think a stipulation is necessary from us, sir.

Hearing Examiner Creel: All right. You are not required to do it. But I do make that assumption, myself, that while details will be somewhat different the testimony should be about the same and for that reason I don't see any reason to go to different sections of the country to call that same type witness.

Mr. Burke: I can certainly appreciate your attitude, and I think your assumption is correct and a valid one; I am sorry that counsel for the complainant sees fit not to so stipulate. However, as I remarked, the testimony adduced in support of this complaint by several manufacturers who seemed addicted to name dropping in various parts of the country and evidently characterizing certain practices that seemingly had regional tendencies, in order that this respondent may adequately protect its rights in view of that type of testimony we feel compelled to introduce evidence that will show that the contentions made by a number of these witnesses are in error and inaccurate and that we propose to do, and, as I say, it is burdensome on this respondent, but we have that burden due to the nature of the evidence that was put into the case.

Hearing Examiner Creel: Of course, I am going to permit you to rebut any specific evidence that you choose to, but some day before too long I think I'm going to call a halt on the general dealer testimony.

Mr. Burke: Of course, I may remind you, sir, we have endeavored very conscientiously to refrain from cumulative and repetitive evidence to a large measure. A great deal of the testimony has been for the purpose of demonstrating the validity of the position that this respondent takes on various aspects of the franchise program.

Hearing Examiner Creel: Well, I just wanted to give you some notice of the way I'm thinking about this particular kind of testimony.

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July 14, 1961

ROBERT P. HOWE, called as a witness for the Respondent, testified as follows:

Direct examination.

The witness resides in San Bernardino, California. His business is a family shoe store. He has been in the family shoe business 22 years. His store name is Howe's Shoes, Inc. It has been on the Brown franchise program 22 years. The brands of shoes he presently carries in his store are Wright Arch Preservers, Roblee, Sherbrooke, and Evans, DeLiso Deb, d'Alexis, Risque, Debs, California Cobblers, Musketeers, Danie Green, Buster Brown, Glamour Deb, Child Life and U. S. Keds.

The fieldman of Brown Shoe Company that calls on the witness is Mr. Val Kemp. He calls from 4 to 6 times a year. The fieldman aids in the preparation of buying guides, promotion programs, and the year-end closing statements.

The witness uses the accounting forms that are furnished under the Brown franchise program. He has used those for the full time that he has been in business. He participates in the group life insurance under the program. His business insurance is carried through the Brown program. As to the window trim service, he does his own program. He has had occasion to borrow money from Brown. That was done when he originally started in the shoe business 22 years ago, and in 1955. There were no

conditions or restrictions placed on those loans as to how [fol. 503] he would use the money. There was no condition or restriction as to the buying of Brown shoes in regard to those loans. There was no condition or restriction that he would not buy other lines of shoes in connection with the loans. The loans were on a time payment basis over a three-year period, and the most recent one has been paid according to plan.

U. S. Rubber Company has basically been his sole source for canvas footwear. He has used, this past season, merchandise from Hood. No one connected with Brown Shoe Company has told him that he shouldn't buy from any other source than U. S. Rubber. He purchases U. S. Rubber goods from the local salesman. He has made no investigation as to the prices he receives in buying U. S. Rubber, as to whether being on the program his prices are any different. He has always bought on the program. His billings from U. S. Rubber are billed on memorandum from U. S. Rubber and the subsequent invoice comes from Brown. It's always been done that way for the entire time that he has been in business. No one told him he had to do it that way to be on the Brown program. That is a choice on the part of the witness. He has no way of comparing the price of the product that he is buying from Hood Rubber Company with similar types of products from U. S. Rubber, because it's an item that U. S. Rubber did not make.

As to the meaning of the term "line concentration," the witness said, it means that in a given category of footwear, by type of footwear, relative to use or price range, we concentrate all our merchandise and efforts on a single brand in order to gain the greatest advantage from a merchandising standpoint. It eliminates duplication. Two lines involve duplication, which increases the inventory and reduces the turnover. That is a most important area in shoe merchandising because the merchandising of footwear involves a high inventory cost in respect to sales, and the greater return on the investment is produced by the greater turnover. Duplication reduces the turnover, and therefore, from a good merchandising practice, it is best that we maintain as little duplication as possible. The witness practices this policy of line concentration



[fol. 504] in his merchandising. There are overlapping areas in the lines the witness has, but they do not directly compete with each other.

For illustration of how this concentration works, the witness said, in the instance of men's footwear the great bulk of his business is done in the middle price ranges, from \$12.95 to \$17.95, which is represented by the Roblee line. He does not carry any other line of shoes that would fit into this same category as to price or type, because it would only duplicate any inventory. The duplication of a pattern in that price range of another brand would not necessarily increase his sales. It would increase the inventory and raise the investment. Generally the inventory problems are a result of duplication and overlapping of lines. You have to correct an inventory problem through the process of eliminating the overlapping area by mark-downs.

The witness himself determines the lines that he carries. He seeks to have the strongest lines from a sales advantage in each of the categories that he is merchandising. It is on that basis that he is carrying those brands he stated in the record. And that is on the basis of following this merchandising policy of line concentration. No one from Brown Shoe Company has told him that he must carry certain lines of Brown shoes. It is his own personal decision as to what lines he carries. No one from Brown has asked him to stop carrying other lines of shoes not manufactured by Brown Shoe Company. No effort has been made by anyone from Brown to compel him to stop carrying any outside or conflicting lines.

The witness has never signed a franchise agreement with Brown Shoe Company. He is on the Brown franchise program because of the services rendered by the fieldman and the program of bookkeeping and audits and controls. He is under no obligation to be on the franchise program. It is his understanding that the program is voluntary on his part, and should he wish to drop the advantages of the program, that he could do so at any time. Being on the franchise program, the witness does not have any obligation to Brown Shoe Company to buy their shoes.

. . . . .

[fol. 505] The witness has been carrying Deb shoes ever since 1946 or 1947, he can't recall exactly. He would classify them as a line to fill a specific category, namely, flats and sports shoes. He carries Deb shoes because they produce a type of footwear which fits his merchandising program. He went into carrying Deb shoes at the time that the flat became very popular. Debs were the early producer of this type of shoe, a leader in producing flats. From a fashion standpoint it was a key line of flats, and he used the line because it represented an important part of his program. It performed well in the early years, [fol. 506] the first 2 or 3 years. After that the fitting qualities became quite poor, to the point that markdowns were quite extensive. That had a bearing on his purchases of Deb and he had to restrict his purchase because of the heavy losses incurred in markdowns. That occurred approximately 1950 to 1951. Other shoe manufacturers started making the types of casuals and flats that Deb started with. At that time the flat became a general category of footwear, produced by many manufacturers. The witness substituted other lines when he had this difficulty or he used the flats produced by his existing lines. No one from Brown Shoe Company told him that he should not carry the Deb shoes. No one attempted to threaten or coerce him to stop carrying Deb shoes. He has never completely stopped carrying Deb shoes. He still carries them.

He has never carried shoes manufactured by Juvenile Shoe Corporation. He has never had a salesman call on him to sell him Clinics. Clinics are carried in his town in a leased shoe department in a women's specialty store, and a department store. That is in his shopping area. The witness knows the brand called Lazy Bones. They are carried in his community at the department store, the same place that carries Clinics.

A salesman has called on him to sell Freeman shoes. He has never bought any Freedman shoes for the reason that he has the Roblee line which covers that particular category, and they are doing well, pleased with it, and he has no reason to add an additional line. Being on the franchise program does not prevent him in any way from making a decision as to whether or not to buy Freeman shoes. It was the fact that he had another line.

A salesman from Weyenberg Shoe Corporation or Shoe Company has never called on him. He is not too familiar with them. The name Port-O-Ped or Massagic refreshes his recollection. They have been carried in his community. What their present status is, he doesn't know. The type of store that carried them was a general shoe store, family shoe store. That store is still in business. He doesn't [fol. 507] know whether they are carrying that brand.

A salesman from the Huth-James Shoe Company has never called on him. A salesman of the Leverenz Shoe Company has never called on him. He doesn't know whether any store in his community carries either the Huth-James or Leverenz brands. He doesn't believe they are represented in his community.

The population of San Bernardino is 93,000, with a trading area of 200,000. They are other shoe outlets selling shoes in his community. He would estimate that there would be approximately 30.

#### Cross-examination.

The witness opened his shoe store on the Brown franchise program. He did not get a loan for that occasion from Brown. He originally opened in Anaheim, California, and after 2 years he moved to San Bernardino and opened. At that time he received a loan from Brown Shoe Company. He was a Brown franchise dealer in Anaheim. He purchased that store and it was a going franchise store.

At the present time approximately 70 percent is the percentage of dollar volume that he sells in Brown shoe lines. The percentage of Brown lines in his store inventory would also be about 70 percent.

He purchases U. S. Rubber Keds and other canvas footwear and he supplements this with another line. He first started buying U. S. Rubber goods 22 years ago when he opened up his San Bernardino store, and he also had them at the Anaheim store. They were in there when he purchased the Anaheim store.

He has used the window trim service of the Brown franchise program, but not for a number of years. He used the architectural services provided by the Brown franchise program once, in 1947. He has a large neon

sign in front of his store that says Howe's Shoes. He got that sign through his own purchase. He has no neon signs that were given to him by Brown. He bought the Howe neon sign approximately in 1950. He did not inquire at Brown whether or not he could have gotten one from them.

[fol. 508] The witness does not feel any obligation towards Brown for the services such as accounting and inventory assistance, insurance plan, and loans, provided by them. He would feel free to go and buy shoes from somebody else, say 70 percent of his inventory from some other company, and still receive those benefits and services. The witness does not look upon these things as services. He looks upon them as part of doing business, and if they were withdrawn from him, he would have to seek the insurance or the bookkeeping from some other area. He doesn't know whether he would expect to continue to receive these services from Brown in the event he did buy a large portion of his inventory, such as 70 percent, from someone other than Brown. As long as he needs insurance and as long as he needs a bookkeeping program, and they continue to offer this to him, he will continue to use it. It would be up to them to withdraw it from him. As to whether he knows of any other source of these services or benefits, he said he would turn to an accountant, or to another source of insurance. He assumes that would cost him quite a bit of money.

His principal line in women's shoes is Air Step. He would say that Red Cross is a more well-known line of shoes. As to whether he would have any trouble merchandising Red Cross, at the same time having his principal line of shoes in men's and children's from Brown Shoe Company, the witness said in the first place he couldn't get Red Cross shoes. They are not open in his community, and they never have been since he has been in business. The witness feels that Roblee is the strongest line in its particular price range. If Red Cross was available he would not consider taking it in lieu of Air Step. He has had Air Steps for 22 years and has built a following on this line of shoes, plus he owns an inventory, and changing stocks is a costly factor. Red Cross shoes are manufactured by U. S. Shoe Corporation.

The witness does not have 200,000 people in his trade

area that he might sell shoes to, who would all come to his store if they needed a pair of shoes. He has a family shoe store, priced for the upper level of the consuming market. Approximately 11 other shoe stores in his area [fol. 509] are directly competitive with him. They are all family shoe stores or department store departments. Three of them are on franchise programs of other companies to his knowledge, and two are company-owned stores.

The first loan the witness got from Brown was made back in the three-year period which he mentioned. He has approximately 150 pairs of Deb shoes in his store at the present time. He mentioned in his direct testimony that he carried a DeLiso Deb, made by Samuel Shoe Company. The 150 pair figure he just gave, was for the Deb Shoe Company, Washington, Missouri. The reason why he substantially reduced the number of Deb shoes that he had in his store was that they had poor fitting qualities. As to why he still carries 150 pairs, if they have this drawback, the witness said they have several specific types of shoes that he has developed a clientele for, that represent fine value and fine fitting qualities, and he carries these for these clientele, namely the Deb Brittony Tye. That never has suffered from the same poor fitting quality that the other Deb lines have. The top number of Deb shoes that the witness has had in his store since he first started buying Deb, is between 500 and 600 pairs. That was probably in 1948 to 1949. At the time they were at their peak. Brown Shoe Company brought out lines that were similar to Deb's subsequent to that time. The witness bought these.

#### Redirect examination.

In regard to the matter of bookkeeping and insurance, the witness has not had any occasion to make any study as to what it might cost him for the type of paper records for bookkeeping purposes that are presently furnished to him under the Brown franchise program, if he chose to acquire them elsewhere. There is a stationery store in his town; they sell forms for bookkeeping. He has never made an investigation as to what that might cost. He has never made any similar cost comparison in regard to insurance. He has insurance brokers in his community.

[fol. 510] JEROME HOFFMAN, called as a witness for the Respondent, testified as follows:

Direct examination.

The witness lives in Los Angeles, and his business is the retail shoe business. He has two stores that he owns outright and a half interest in a third one. One of these stores is located at 258 Harbor Drive, Redondo Beach. Number two is 65 Pier Avenue, Hermosa Beach, and number three is 842 East Valley Boulevard, Alhambra. The population of Redondo Beach is approximately 35,000. The population of the marketing area that he draws from is roughly around 40,000. The population of Hermosa Beach is 17,000 people. The population of the trade area he draws from there is probably 20,000 to 25,000. He guesses the population for Alhambra is about 75,000 to 80,000. Trade area is about the same.

He opened his store in Redondo Beach in 1952. He bought a store that was in existence, an International Store. It was an International set-up completely as far as he knows. They were on the Merchants' Service Program. That store is now a Brown franchise store. It went on the program as soon as he bought it in 1952.

Number two, which was Hermosa Beach was a Brown franchise store when he bought it in August of 1958. The Alhambra store was a General "set-up" when he bought it two years ago, in July, 1959. By "General set-up", he means the store was basically buying all from General. He thinks they were financed by General somewhat. As to whether he is familiar with General's franchise program at all or whether they have a franchise program, the witness has always understood that they loaned money to stores, but he has never looked into their situation. They never contacted him.

He was in shoe retailing part time about a year and a half, then he got about 11 years full-time experience in it. He is a graduate of College, Bachelor of Science, and majored in Economics.

The Brown brands he carries in his shoe stores are: in children's, Buster Browns and a few Robin Hoods; in [fol. 511] women's Smartaires, Naturalizers, and Life Strides; and Roblee and Pedwins, in men's. As to the



other brands of shoes in those stores, he carries: men's Florsheim Shoes, L. B. Evans casuals and house shoes, U. S. Keds, B. F. Goodrich and Orthopedics from Walkin Shoe Company. He carries pretty nearly the same brands in all stores. There are a few variations, but basically the same brands. In Alhambra he's having a hard time getting Florsheims, but thinks he is going to get them this season, because of other conflicting stores in the area. Basically he tries to carry the same brands. He carries a few Sabel orthopedics, C. H. Aldon orthopedics and Simplex orthopedics.

The witness buys flats from whoever he wants. Actually flats are sort of a fast thing out there, and he buys them wherever he can get the styles he wants; maybe with a jobber one season, or a direct source such as General or International the next season.

He carries Fiancees up until about 3 years ago in Redondo Beach. He dropped them because he felt that the May Company priced the shoes at such a price that he couldn't compete. In the shoe business, in women's shoes, to break even you have to make at least 43 percent gross, and in high style shoes you have to make at least a 45 to 48 percent markup. The May Company was getting about 38 percent on those shoes, which he doesn't know how they did it, unless they were getting a better price than he was. It was impossible for them to do it without some type of advertising allowance or something. So even though he really liked the shoes, at the time better than Life Strides, but he's not in business for his health and he couldn't make a profit on them, so he dropped the line. The May Company is May Company retail department stores.

The witness mentioned he was having trouble getting Florsheims in the Alhambra store because another store had them in the area. This is a factor normally considered by a manufacturer or supplier of shoes, and by a prospective buyer. It's a factor both ways. If you've got the line you don't want anybody else to have it, and if you [fols. 512-513] haven't got the line and you want it, you're trying to get it. It's simple. In this situation Florsheim has an old account that's been in the town for years, even though he's downtown, and he's been fighting the situation,

and in fact he went so far as to try and get a store in the shopping district the witness is in, which he couldn't get. And that was just consummated this week, the witness got a written guarantee of no other family shoe store, so he guesses he will get Florsheims for the fall in there.

. . . . .

[fol. 514] His fieldman from Brown is Val Kemp. He visits the witness on the average probably two, three times a year, maybe more. When he visits they usually discuss inventories, is he getting enough turnover to make a profit, his markups, maybe general economic conditions in the area. Sometimes he may want advice on a lease that he's going into, or something of this type, and he will call the fieldman, who will come over and discuss it with him. The witness finds this very helpful.

The witness makes out monthly reports in connection with the franchise program. He makes out an open-to-buy. As to its purpose, he said, you have to have an over-all plan, to be successful in retailing, you just can't fly by the seat of your pants any more, and the more scientific you get about it the better chances you've got of making a profit. The witness purchases the life insurance available through the Brown franchise program. He has never made any comparison as to what the cost of the same life insurance purchased somewhere else would be. He does not purchase group business insurance through the Brown franchise program. He buys that from a local insurance agent. As to whether he has made any cost comparison as to that insurance, he said, well, that's the reason. He had Brown insurance when he first went in business. It might be five or six years ago when he switched over. For the same amount of premiums, he got a better insurance, what they call a marine block insurance in retailing, and it gives him a much better coverage for the same money, and so he switched over to that. He buys that locally, not through the Brown franchise program, but from an insurance agent in Redondo Beach.

He has used the architectural services available from Brown. Mr. Moore of the store planning division was out numerous years ago and helped the witness out, re-

designed his store so that he could get more stock space in it.

There would be no reason to compare what the cost of that service that Mr. Moore furnished would have been if he got it locally. He is very competent, an expert [fol. 515] in his field. The witness does not use the window trim service available through the program. He has received a loan from Brown Shoe Company. He received a \$10,000 loan just about the time he bought Hermosa Beach. It's been about three years. There was no condition on the granting of that loan, that he would go on the Brown franchise program or buy Brown shoes. The only conditions were like any other conditions when you take a loan, that you pay it back, with a certain amount of interest. Those are the only conditions that pertained to the loan at all. The witness had a schedule of payments. He met those payments. That was his total obligation. As to whether he used the money proceeds of the loan to buy only Brown Shoes, he said, no, he just threw it into his checking account. Due to buying two stores within a period of a year, he was bound up for cash, so he just used it to pay up bills to all his sources. Everybody that he owned money to.

His rubber and canvas footwear suppliers are U. S. Rubber Company and B. F. Goodrich. And, Topsiders, he forgot to mention, who are a very small part of his business. The U. S. Rubber Company makes those, but it's a separate company. He receives the same terms exactly from both U. S. Rubber and B. F. Goodrich. He has no reason to believe that as a Brown franchise dealer he receives a special discount or any better terms from U. S. Rubber Company on that type of footwear than he would if he were not a Brown franchise dealer. He gets the same terms from B. F. Goodrich, the same dating and everything exactly, and he only buys maybe 10 percent as much from them as he does from U. S. Rubber.

The witness decides what brands of shoes he carries. No one from Brown Shoe Company has ever attempted to force him to carry Brown brands. Nobody has ever told him what to carry in his store, except the salesmen that call on him naturally tried to get him to carry their brands. As to whether anybody from Brown ever tried

to coerce him into dropping an outside line of shoes because he was on the Brown franchise program or for any other reason, the witness said, well, just one other [fol. 516] reason. When Val Kemp took over as fieldman he tried to get me to drop some casual type shoes which he felt were much too cheap for my type of operation. It was not a conflicting line with Brown, because they don't make anything in this area. He felt that I was carrying merchandise that was too cheap for my type of merchandise in my stores, which proved out to be true, and I later dropped them. After getting burned a couple of times I later dropped the lines and picked up better casuals.

It is accurate to say in connection with the Brown franchise program that Brown has never attempted to tell him what to buy or what not to buy.

The witness has never been called on by a salesman from Juvenile Shoe Corporation. He has been down to the sample room maybe 8 to 10 times trying to get Clinic shoes, but he's never been successful at getting them in his stores. As to why he can't get them, and whether someone else in town carries them, the witness said, at one time somebody else did carry them, but they moved out of my trading area basically, they moved quite a ways away. But every time I talk about Clinic shoes he talks about Lazy Bones, who are their children's line, and I don't need this line of shoes. Like I say, I've tried to get the line because it is a good line of women's shoes, but I talked to a couple of friends of mine that happened to know this salesman very well, and they said the reason I can't get the shoes is, its very simple, because I don't buy his children's shoes, so he won't sell me his women's shoes. He's promised to call on my store two or three times and discuss it with me, and he's never called on me yet. The store referred to is Redondo Beach. The witness would like them at all three stores, but basically for Redondo Beach and Hermosa.

He was called on by someone from Deb Shoe Company about 7 years ago. The salesman called on him once. The salesman needed some shoes for a friend of his, and the witness ordered them special, and he came back and picked them up, and that's the last the witness has seen of him. He doesn't believe they have the salesman any

[fol. 517] more. As to why the witness wasn't interested in buying those shoes, he said, because he thought they were overpriced shoes. And they could be bought out of Crown Shoe Company, which most merchants that buy Debs don't realize, that the name doesn't mean anything. It had a couple of hot seasons, 10, 12 years ago, but actually you can buy the same thing from Crown, who makes Debs shoes. You can buy the same shoes for a buck and a half, \$2.00 a pair cheaper.

A salesman from Freeman Shoe Company was in the witness' store one time. He was looking for directions to find another store in the area that he called on. He's never been in since. He never even discussed selling Freeman shoes. He has never been back to try and sell the witness, who said, I saw him at the Shoe Show, and we laughed about it. That's the only time he's ever been in the store was to find the other store. He was looking for directions.

The witness has never had a salesman from Weyenberg Shoe Company call on his store. Wyenberg shoes are sold in outlets or stores in the whole Southern California area. Their biggest source of distribution is outlet-type operations. An outlet-type operation is an operation that cuts prices because of different factors. They try and sell their shoes a little bit cheaper than what he calls plate glass stores. An outlet-type store can't give the same quality of fitting service that his type of store would, because there are no secrets in retailing. If you're going to give certain services and pay certain rent, your overhead is going to be such, and you've got to have overhead plus a higher markup than your overhead to make a profit, and they can't possibly sell shoes cheaper and give the same service and so on, the quality of fitting, and stand behind their merchandise.

When he came in the shoe business he was pretty new, but he had definite ideas. He had only worked on it maybe a year, and he told everybody in the shoe business, and everybody thought he was crazy, but the first slogan he put in his stores, which is on everything he puts out, is "We Guarantee Fit". Because you're a good store, [fol. 518] and you've got to stand behind your fitting anyway, so you might as well guarantee. But an outlet type of operation can't operate this type of a business on their markups.

Weyenberg's happen to have probably as good or one of the finest shoes in America for the price, but the fact that they do sell to outlets would be one factor why he would not buy these shoes. Number two would be that a lot of the boys band together in these outlets and buy big volume, and they can get a much better price than he can get on the shoes, so they can sell them cheaper and still practically make the same markup.

The witness does not know the Huth-James Shoe Company. It's foreign to him. He has never heard of their shoes, Snow Go, Sturdy Style or Floataways. He has never been called on by a salesman from the Leverenz Shoe Company, who make Calumet and Lake Line. He is not real familiar with that company because he never had reason to look up their lines. He can't think of a merchant that carries their shoes. It's just not interesting to him at all as a merchant.

Q. Mr. Hoffman, do you feel that you have any obligation to Brown as a franchised dealer?

A. Why, certainly.

Q. And what would that obligation be?

A. Well, its—I guess it's an obligation. I feel that any time that you have a friend, all things being equal, you give your friend some favors; just like if I have a customer and he—which happens in any business, being a local merchant I carry a lot of credit in my store, I carry 800, 900 accounts in Redondo Beach—and if a man is out of work or can't pay his bills and I don't give him a bad time over it, I carry him on credit, and the man gets back to work, or he pays his bills off, say he had sickness or whatever the case may be, I feel certainly that I should get his business, all things being equal, and that's how I feel towards Brown. They give me services and, all things being equal, I'll buy shoes from them. If I can buy shoes better, or better from somewhere else, I'll buy them. It's that simple.

[fol. 519] Q. Do you feel you have any legal obligation to buy shoes from Brown because of these benefits?

A. No.

Q. Have you ever told Brown that you will buy shoes from them in return for these benefits; as long as they continue to benefit you, you will continue to buy?



A. No.

Q. Has Brown ever asked for any kind of agreement like that?

A. No, there's never been any agreement of that nature discussed, pro or con.

Hearing Examiner Creel: Did you ever sign any Brown franchise agreement?

The Witness: You're asking me an embarrassing question. I may have, but I don't remember it.

Hearing Examiner Creel: Did you see one, that you remember?

The Witness: I don't ever remember reading one.

The witness has brand identification signs in the front of his stores. The biggest would be Florsheim signs and Buster Brown. Those are the two main ones. He is just getting a new Florsheim sign in the one store. He had a small one. It would be 16 feet high and probably two feet wide. It's made of a white plastic with a green background, lettering, "Florsheim Shoes". It lights up. They're using it instead of neons, because it's more effective. It is his understanding that he received that sign because he carries Florsheim shoes. According to the salesman from the Florsheim Company it's about a \$1500 to \$1600 value on that sign. The only thing it costs the witness is the installation price. His arrangement regarding the ownership or control of that sign is as long as he is a good outlet, or whatever you want to call it, or a good dealer for Florsheim Shoes, he'll keep his sign. It's that simple. And if he doesn't have Florsheim shoes he naturally can't keep their sign. He just has the use of it, is all. All he does is pay for the installation. It's their sign.

He does not know whether he has the same arrangement with the Buster Brown sign. He doesn't think there was any discussion with Brown at the time he was given the [fol. 520] sign. He asked them if he could have a sign. He has a sign in Hermosa Beach. He asked if he could get a sign if he bought the store, and the salesman said he'd see if there was one available. He said they didn't have too many signs to give out, but if he could get one he'd be glad to try, and he got it for the witness, and this was it. The witness paid for installation. He received that

sign for use because he's a Buster Brown dealer. There would be no other reason. This sign was not given in connection with the Brown franchise program. The witness saw the sign, that is the reason he wanted one. He saw one in Manhattan Beach from a competitor of his, who is a very good friend of the witness and he has a sign. The friend is not a franchised dealer, but he has the same sign. That's where the witness saw it.

#### Cross-examination.

The witness is a half-partner in the Alhambra store. When he opened the Redondo store in 1952 he does not believe there were any Brown lines in there. He bought a complete store, fixtures and inventory. He got rid of the International shoes there were in there by putting them on sale. The Hermosa store was a Brown franchise store when he bought it in 1958. The Alhambra store is now on the Brown franchise plan too. He went on the Brown franchise plan there in 1959 right after he took it over. Actually he took it over and then he went to Val Kemp, the Brown fieldman, and discussed it with him, after he bought it, and then he took in a partner. The witness is not in partnership with Val Kemp. He is in partnership with Kenneth Keatings. The witness did not get rid of the merchandise there, other than Brown, by a sale. He took the fixtures and store over and let the man out of his lease, and the man probably took his merchandise to his other store. The witness carries Florsheims in two stores right now. He's going to get it, he's sure, in Alhambra. He doesn't know if it's the principal men's line in those stores or not. He'd have to analyze the statement like that. He'd have to sit down and break it down dollarwise and profitwise to make a statement to answer [fol. 521] that. It is not close enough to cause doubt in his mind between Roblees, because Roblees are too close in price, and actually he sells many more Florsheims than Roblees, dollarwise and pairagewise. But there is a doubt as to value. He would have to make a study before he could answer that. As to whether he carries the full Florsheim line, all the patterns that they sell, the witness said their own stores can't afford to carry all their pat-

terns. They would go broke. It's too full a line to carry everything for one merchant.

He has more Florsheim shoes in the two stores than Roblee, but he doesn't have more than Pedwin. He would not say that Pedwin was the principal men's line in those two stores. You can't determine it by the percentage you carry, because a Florsheim unit probably averages \$24.00 today, and a Pedwin unit averages maybe \$11.00. When you say which your important line is, this is a broad question. If it came to a decision as to whether you would rather have Florsheims or Pedwins, there are many factors that come into a statement like this. It's not only a matter of dollars and cents. Maybe it's a matter of how much is the Florsheim name worth to you as prestige in your store, as far as the public when they look at your store. Psychologically it may be worth more to offset the profit factor, if there was a bigger profit factor.

The witness does not carry the expensive lines of Roblees. He supplements his Roblees with the Florsheim. He doesn't carry Roblees above roughly \$15.00, because he feels as a merchant why should he duplicate. When he can sell them a \$20.00 Florsheim, why should he have an \$18.00 Roblee sitting there. He might as well sell them the \$20.00 Florsheim, which gives him another 80 or 90 cents worth of profit for the unit. The approximate percentage of total inventory in his three stores that he sells to women is close to 35 percent, in dollar sales or pairs. The other 65 percent is mostly in children's types.

As to what the percentage of inventory in the Redondo store is made up in Brown lines as far as dollar sales and numerical inventory, the witness said, I can't tell you this. There would be no reason for me to spend [fol. 522] time analyzing something like this. I buy what I want anyhow, so what's the point in me deciding which is Brown's or which isn't Brown's. I might break it down by men's sales against children's, and by children's against women's, there might be a reason for this, and see where maybe I should put my efforts into children's business or men's business, but as far as me breaking it down as to which is Brown's and which is not, that would be a waste of my time, because if I don't want something that Brown has I don't buy it. And for example, they

are pushing orthopedics right now, which is any company's right to push any line they want, and I don't buy their orthopedics.

There would be a better reason to break down his inventory in one of the three stores, or all three, as to the men's, women's and children's shoes. He has never done it. The witness goes over his inventory every month by himself. As to whether from that study the witness can give an approximate figure of what percentage of that inventory is composed of Brown's lines, the witness said, when I break my books down I don't break it down by which is Brown's and which isn't, I just break it down by merchandise. In other words, as an example, my children's, I just bought a new line because I thought they offered something to my store. I don't know what amount of that new children's business—in other words, how much Buster Brown business that will cut out. I don't care. I make a good markup on those shoes, and this is my problem as a merchant. I never analyze the difference between percentage-wise how much is Brown, how much isn't, because I don't care. I buy lines for profit, and if it's Brown's fine. I'd rather give them the business, but if I can find another line that is better, I buy it. So in my mind there is no breakdown mentally for me at all because there is no barrier built up should I buy from Brown or shouldn't I. It's simply a merchandizing decision. And so there is no reason for me, when I'm looking at my books, to decide which is Brown and which isn't. On my Keds I don't even have it broken down which is Brown. Like, for example, all my Welts, 8½ to 12 would be H-1, is my category. I keep a per-[fol. 523] petual inventory every day, but I don't know which of that is Brown's and which isn't.

The witness definitely believes in the theory of line concentration. He applies it in his stores to an extent. Where he thinks it is profitable for him he applies concentration, definitely. His major lines in men's shoes are Florsheim's and Pedwins as far as he's concerned. They don't conflict. His principal lines in women's shoes—talking about Redondo and Hermosa, are Naturalizers and Life Strides. In fact, he may even drop Smartaires. It's a lower line than Life Stride, and he doesn't think there is a need. In Alhambra the principal line is Smartaires, Life Stride

is second, and Naturalizer is very small, depending on the area and what the area calls for pricewise.

The witness was asked by the Hearing Examiner, when he made out his open-to-buy, or when it is made out for him, whether it showed the lines that he is open-to-buy in, and how much in each line. The witness said, yes. He would show it much easier if he could refer to a sales record form. The Hearing Examiner said he was wondering whether the witness couldn't normally tell by his open-to-buy or any other record that he keeps, what his volume is in various brands. The witness said no he couldn't. He asked for a sales form. (The witness was then shown and thereafter referred to Commission's Exhibit 115). He said, all right, now here is an example. We'll go to here, because it's easiest. Here is our children's here, we'll say, H-1. These across here like this would be A, B, C, D, E, F, G, H, right across here, and off of that you take your daily pairage, off your tickets on our setup you take the category which these—everything in here would be H, for example, in my stores. This here would be like H-1, 2, 3, 4.

Now, H-1 says Buster Brown Welts, but I put everything in H-1 that is 8½ to 12 Welts, other than orthopedics, which is separate. So in Buster Brown Welts, although it says that, I may have four brands in there. I know I have Grow-Right, I have a few Walkins and regular shoes, I have Crider & Sons, and I carry my Busters. So it would all be taken off of this one column.

[fol. 524] When you open to buy, you look at your open-to-buy and it says, "Buster Brown," naturally, it's made by Brown, so when you're open to buy you open to buy 452 pairs of Welts between now and back to school, your first buy should be so much and your fill-in should be so much. It may say there Buster Brown Welts, but in any particular instance there may be five different brands in there.

It's the same all the way through. Even though it may say Naturalizer, I may have three or four brands there in that category of the same type of merchandise, see. It would be all conflicting merchandise. I do keep it like the column heads show, but in the same column head there may be, as an example, well, we'll take flats. Here is an-

other one like we were discussing. Who did I buy my casuals from? Well, I use E-5, it says here Robin Hoods, or Varsity Vogue flats, I probably got 10 different brands that I throw into that one category. They may include Robin Hoods or there may be five or six other brands in there.

So my open-to-buy is made up—I'm open to buy 400, 500 flats in one store. Taken off this list it's Varsity Vogue, but I may buy it from 10 different sources in that one category, or maybe I might only buy from Brown. It depends.

The approximate dollar volume from the three stores for the last year, taken together, was \$315,000.

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WILLIAM AXLINE, called as a witness for the respondent, testified as follows:

#### Direct examination.

His home is La Mirada, California. He is in the retail shoe business, and owns two stores. One is located at 4740 Whittier Boulevard, East Los Angeles. The name of that store is Axline's Fine Shoes. The other store is also Axline's Fine Shoes, and is located at 245 Forest Avenue, Laguna Beach, California. His store in East Los Angeles is not part of the City of Los Angeles, it's in the county. That store was opened August 2, 1954. [fol. 525] It went on the Brown Franchise program in the same year, after he had opened.

In the East Los Angeles store, the witness carries the name brands in Brown Shoe Company. He carries Naturalizer, Life Stride, Roblee, Pedwin, and Buster Brown. Then in other lines he carries Hollywood Scooters, Goodman, Miller, and Buskin, Thorougheed work shoes, and a few Italian imports. He is the one who determines what shoes he carries. He makes that determination on the basis of sales and past records of the types of shoes and what the local community needs. He can switch to different brands at any time that the community calls for them. In other words, it is the performance of the shoes. In regard to his store in East Los Angeles, no one from Brown



Shoe Company has ever told him that he must not carry a certain line of shoe because he is on the Brown franchise program.

The witness started in business in his Laguna Beach store in August, 1960. That was a brand new store. As to the lines of shoes he carries they are not similar to what he carries in his East Los Angeles store. He has Clinic shoes and Freemans in addition to what he has in Los Angeles. There is quite a number—to enumerate them would take quite a while. Out of the wholesale district in Los Angeles he buys quite a few shoes from Solnit and Rifkin Shoe Company. They would be more on the casual line, sandals and that type.

The witness borrowed \$10,000 from Brown Shoe Company when he opened his East Los Angeles store. The payment arrangement was monthly. He had a 4 year term on it. It has been paid off. He borrowed \$13,000 when he opened his Laguna Beach Store, and that is being paid off now. That is on a monthly schedule also. There was no agreement between the witness and Brown, or any condition with regard to the granting of the loans, that in any way required him to buy Brown brand shoes. It was strictly a note and the money was in cash, and he could buy anything he wishes, either fixtures or shoes or whatever he wanted to spend it for. There was no limitation on the source of shoes, no tie-in at all on the note.

[fol. 526] He carries U. S. Rubber and Red Ball Jets canvas and rubber goods. There is duplication in some of the products he buys from U. S. Rubber and Red Ball Jets. As to whether there is any difference in price on this similar type of item, the witness said, very closely the same. Not much difference in them. It's just the name brand, that it's necessary to carry both lines. In his East Los Angeles store, he doesn't purchase the U. S. Rubber merchandise, he draws it from his Laguna store. The Laguna store purchases it there, due to the discount. He can buy larger purchases, so they take it through the Laguna store. He buys direct from U. S. Rubber. Being on the Brown franchise has nothing to do with the price he gets from U. S. Rubber. It would be the same price. It's billed through Brown. It's more convenient that way. He can have his bill monthly, and he can make one check for it.

It's much more convenient for the bookkeeper. He can have it either way he wishes. They bill him direct or through Brown. It doesn't make any difference. The purchase transaction is with a U. S. Rubber salesman. They send their representatives right to the store.

His East Los Angeles store is located right in the heart of the business community. He estimates in shoe outlets that in 6 blocks, there are approximately 34 shoe outlets. Three blocks on either side of his store.

A Brown fieldman calls on the witness. He is available any time the witness wishes to call on him, and he will visit the witness once every 3 months. The fieldman answers any questions that might arise that the witness can't get any information on, and helps with his bookkeeping problems, advice on leases or rentals, or practically anything that the witness would be in trouble on. The fieldman can usually give him a satisfactory answer or an unbiased opinion.

The witness buys group life insurance on the Brown franchise program. As to business, casualty or other types of insurance connected with his business, he said, originally he purchases the services of Brown, and after several instances, with his windows being broken, being in the neighborhood he is, he found that the service through [fol. 527] their agent here was too slow. In other words he had to wait maybe 6, 8, 10 days for them to get out to make an adjustment. So due to that particular fallacy, he changed and had his own agent handle his whole structure of insurance, that is, his home and his cars, and he found it to be more satisfactory. That's a much broader coverage on that basis than he was buying from Brown. As to the differential in cost, he has never figured it out, so he wouldn't know exactly, but he would say 10 percent. This includes the better coverage, better service, and adjustments would be much faster.

The witness thinks "line concentration" is very vital in the shoe business. The term to him means concentration of merchandise in a store. His stores become used to the lasts and the manufacturer and the service, and they can control their stock more efficiently by having less outlets, and if they concentrate into one particular line, the whole crew in the store is able to sell shoes better,

they fit them better and they're more used to them, rather than if they had 6 or 7 different factories in the same category.

A "last" is the wood that the shoe is formed over, and when they fit shoes, they have to clarify them as to shape and depth of the throat of the instep, also the short toe and the long toe, and the wood that the shoe is made over is the last of the shoe, and each is different, each last is different. Each individual factory would have their own lasts. International would not have the same last that Brown Shoe Company would. A particular brand of shoe in seasons, and staple shoes, have a uniformity as to last which stays the same. The fringe shoes would naturally change each season. The lasting of shoes is very important, to the fit of shoes. It's the most important part of his business.

In the operation of his two stores he emphasizes fit, first. That's because he's building a permanent business and the fit of the shoe is the most important part of the sale. The witness uses the way a shoe fits as one of the criteria in determining what shoes he carries.

Line concentration has no bearing in any other phase of shoe merchandising. He doesn't think it has anything [fol. 528] to do with his inventory. Naturally, if you concentrate with one company you don't duplicate, if you buy, say, a child's shoe in brown and you buy it from two or three companies, you could duplicate the pattern and get in trouble by having too many shoes in the same category. You'd have an over-inventory, financial trouble paying for them, you'd have too many shoes in the same patterns.

The locality determines the shoes the witness carries insofar as his stores are concerned. By the locality, he means, the people that come in your store and the type of shoes that they're interested in. He is in a Mexican settlement. Possibly 60 percent of the people in his East Los Angeles store are Mexican people, and they are very cautious as to children's shoes and very conscious as to children's shoes. Their children wear very few tennis shoes. In other words, they will buy a good sandal rather than a tennis shoe, and they're very proud when they go

to church on a Sunday that their shoes are properly fitted and look proper.

Most of the shoes from a total percentage of his inventory are Brown shoes. He carries Brown brand shoes because he has tried other lines in there to match with them, styles that he thought might be proper, but he found that the Brown shoe is a finer constructed shoe, and he is used to selling Brown shoes, and he does a better job with them. The witness does not carry Brown brand shoes because he is on the franchise program. It's the performance of the shoe, absolutely. If the shoes didn't perform, the Brown line shoes, the witness would kick them out. He is under no restriction or compulsion to carry Brown brand shoes because he is on the Brown franchise program. No person from Brown has ever attempted to have him enter into an agreement that requires him to carry Brown brand shoes.

. . . . .

[fol. 529] The witness carries Clinic shoes at the Laguna Beach store. He does not carry them at his East Los Angeles store. The witness said, we called the representative of Clinic Shoe Company, and I guess he had taken a look at my store, and being a more orthopedic type store and corrective type fitting, why, he never called on me there. [fol. 530] And the explanation for that from the representative is the fact that we fit arches in our shoes and that the Clinic shoe was basically too soft and too flexible to hold an arch and would go out of shape too quickly, and they felt it would be detrimental to the Clinic shoes to put them into that type of store, so they never called on me. I asked them to, but they didn't. They are sold in the witness' area, within a mile and a half, but not in the 6 block area, even though there are 34 stores. He does have them in his Laguna Beach Store. No one from Brown ever told him he should not carry Clinics in his Laguna Beach Store. He carries a service shoe in his East Los Angeles Store. He carries the Buster Brown, the LaDue and the Ponca. Those are both service type shoes made by Brown Shoe Company.

He has never carried any shoes manufactured by the Deb Shoe Company. A salesman from Deb has never

called on him. He wouldn't know whether Deb shoes are sold in that 6 block area of his East Los Angeles Store. He doesn't think so.

He carries Freemans in his Laguna Beach Store. He carried Freemans in his East Los Angeles Store originally. No one from Brown ever told him he should not carry Freeman shoes or should discontinue carrying Freeman shoes. He did stop carrying them because they weren't for his East Los Angeles Store, they weren't the type for his particular neighborhood, so he stuck with the Roblee and the Pedwins, which were more superior for his community. When he said that they were not the type, that had to do with the way they sold and the way they fitted. And the store being very small, he couldn't concentrate in their line great enough to pick up their overall picture, so he dropped out of the line completely. That was his personal decision. He was not influenced in coming to that decision by any compulsion on the part of a representative of Brown Shoe Company. He carries Freemans in his Laguna Beach Store now. He didn't start out with them when he started his Laguna Beach Store, he added those later, in 1961.

The witness has never carried any shoes manufactured by the Weyenberg Shoe Company. A salesman has never [fol. 531] called on him in reference to that. Weyenberg shoes have been sold in his East Los Angeles area a number of years ago, but he doesn't think anybody carries them anymore. He has never carried any shoes of the Huth-James Shoe Company. A salesman from the Huth-James Shoe Company has never called on him. A salesman from the Levenenz Shoe Company, has never called on him. The witness has probably seen them in shoe shows that are given twice a year in Los Angeles, but he has never been interested in them.

As to whether the witness incurs any obligation to Brown as to buying any shoes, or any particular shoes or quantities of shoes from Brown, by being on the Brown Franchise Plan, the witness said, absolutely not. He can buy from one to one hundred pair any time he wishes. That does not put him under any obligation that he must buy Brown shoes. He would kick the Brown shoes out, if they didn't stand up to their standard wear and fitting qualities, irrespective of the franchise.

### Cross-examination.

The witness signed a Brown franchise contract in 1954, to the East Los Angeles Store. He read it originally when he signed it. It's been so long ago. He was shown a copy of Commission's Exhibit CX-25-A, which is a Brown Franchise contract, and was asked if he remembered signing a contract which had the statement in it, entitled Paragraph (1) of CX-25-C. As to whether the witness remembered that language when he signed the contract, he said, I read it very thoroughly, and I was very satisfied with it. There was nothing conflicting with my running my business that I could see, or any danger to it. I signed this originally. I don't know whether this is the same one that I have or not, but I signed it in 1954.

Q. And do you remember this language: "In return for the services and benefits I will concentrate my business within the grades and price lines of shoes representing Brown Store Company franchise"—

A. Well, you're going back pretty far, sir, in '54, that's going on six and a half years. To say for sure on [fol. 532] that I wouldn't make a statement on that, but I did sign something similar to this. It's never been enforced, or I have never looked at it since I've signed it.

There is a possibility that that language was in the contract that he signed. The witness read it very thoroughly and he was very satisfied with it.

As to whether the witness testified on direct that he has most of his inventory in Brown lines, the witness said, he tries to keep this as close as possible, for business reasons, as their bookkeeping system is so limited, with his wife and him, that they find that their billing coming through one company is very easy to handle, and they're so happy with the Brown products that actually they would rather have them in their store anyway. So anything that can be maneuvered into Brown is so much easier in the bookkeeping. They like to do it that way. As to whether he has 85 percent of his inventory in Brown, he said, that would be pretty strong. They have house slippers that come from all over the country, tennis shoes, baseball shoes, bowling shoes, tap shoes, ballet shoes, and there's



at least 10 different departments that Brown don't even carry at all. He would say 70 percent would be closer.

The principal line of shoes in each of the three categories, men's, women's and children's, in his stores in East Los Angeles and Laguna Beach are a Brown line. He advertises that in his stores. He features their signs in front, and in the windows, of the type of shoe that it is. In other words, if it's a Freeman shoe, he puts a Freeman ticket on it. If it's a Brown shoe he puts a Brown shoe ticket on it. And the lines that are selling, why naturally he fills in, and those are the ones that will move. In the Laguna Store, Roblee is the principal shoe. He carries more of them than he does Freeman.

As to whether he has any lines conflicting with Brown lines that he carries in both of his stores, as to price, quality and style, the witness thinks that Freeman would conflict in price, and also in quality. There are none other than Freeman, except in the sandal lines and casual lines, [fol. 533] where he buys Porter sandals, and they would conflict with the Brown sandals. But he doesn't let that bother him. In those lines he buys as to pattern and Brown doesn't concentrate too greatly on sandals, so he goes into other companies that are specialists in that field and buys from them. He buys Evans, and also Porter sandals, and Brown sandals—for men. Brown is very weak in the sandal line, so he concentrates into Porters and into Evans sandals in place of that.

The witness does not get the full line of Freeman shoes. It would be impossible to carry a full line of Roblee and Pedwins and Freeman. He picks out the patterns he likes for that particular store and buys them accordingly, according to how they sell. It is possible then in the men's category to have several different brands of shoes if you pick out the style which you think you sell best. The witness could put in as many as he wishes, as many companies as he wished. As to whether that would give him the inventory problem that he mentioned would occur from not following line concentration theory in his stores, the witness said, well, the thing is the space. In other words, the inventory is determined as to how large a store is, and if you carry too many lines and your store isn't

large enough, well, then something has to go. So naturally he just keeps the lines that are the best sellers and the most adapted for that particular neighborhood.

The signs in his stores were not given to him by Brown Shoe Company. The signs that he has on the outside of the store, he paid for. He bought two of them originally and thinks they were \$33.00 apiece. Brown gave him price tickets for his shoes at no cost. The price ticket says Buster Brown or Naturalizer, or Life Stride on it, and Freeman gave him the same tickets. They gave him show cards for his window, and he can also purchase the neon signs from Freeman too. They have a service that he can buy the same as he bought from Brown. If he needed a neon sign with Freeman's name on it, they're available through the Freeman Company, and they send him advertisements on it all the time. The Brown signs are not neon, they're incandescent bulbs inside the signs. [fol. 534] The witness has never used a window trim service offered by Brown through the franchise program. He trims his own windows. He has used the architectural service provided on the franchise, for his Laguna Store. He wrote in and asked them to draw plans for the store, and sent them the measurements of the store, and practically 3 weeks later, they sent him architectural plans of their version of a shoe store. They have had a lot of experience in stores. He didn't use the complete plan, he used what he could use. The witness found it very convenient, and it solved a lot of problems for him that he couldn't have gotten any place else.

As to the 34 outlets in 6 blocks, 3 blocks on either side of him, he said, every type of shoe store you can think of is there. We have haberdashers that carry Stacy Adams, and Jarmans. In fact we have two Jarman outlets there, we have two Gallenkamp Shoe Stores—it's a terrific shoe street, and you really have to be on your toes to stay in business. I mean, if Brown shoes would not fill the bill in that store I'd kick them out so fast it would make your head swim, or I'd go broke tomorrow. If the witness found another line that would sell better, he said I'd put them in tomorrow. And I've tried a lot of different price bracket shoes in there, shoes that sell maybe fifty cents or one dollar less, and we have found absolutely failure with them. They

don't hold up, they don't fit, and they don't wear. And the Buster Brown, actually, with all that tremendous competition has made my store feasible. I've had Stride-Right, I've had Kalisteniks try to put their shoes in my store.

As to whether the witness feels an obligation towards Brown to buy their line, in return for the benefits and services that he receives under the Brown franchise program, even aside from the fact that they have good shoes, the witness said, appreciation of their tremendous service. I have been with International Shoe Company, and I have bought shoes from all over the United States, and it is a pleasure to do business with Brown because of their tremendous service. In ten days I have my baby shoes back on the wall ready for corrective fitting. And in our particular location in East Los Angeles we cannot fit a "C" [fol. 535] on a "D" foot. We don't do it, we don't practice it, and anybody that should do it in the store, why, I look down on them. So Brown to us is very important just from their service alone. As to whether he feels any obligation towards Brown to buy, beside the fact that they have a good shoe and they give him good service, the witness said, appreciation. Makes my job so much easier to work with them. I mean, they are a wonderful company. And there isn't anything that I get into trouble with or problems that I can't call my fieldman and we can work it out, and it makes my job so much easier.

#### Redirect examination.

The witness is absolutely not under any obligation to buy Brown shoes. He is free to buy any brand or line of shoes he wants. He controls his buying of shoes in keeping with what he described as a line concentration merchandising policy. In concentration and in putting in other lines, it's a financial situation. In other words, you have to have the money to pay for these shoes, and you must have room to put them in. Just to go out and buy a line of shoes because you like them, it wouldn't be permissible sometimes. You wouldn't have room for them, and you couldn't pay for them if you wanted to. That's a controlling element in the purchasing. There are mistakes being made in purchasing shoes that don't sell, and he gets overloaded in categories, so he must cut down some place. You just

can't say that you can go out and buy a line of Thoroughgood work shoes when you can't pay for them in thirty days. You've got to be able to handle situations as a businessman. The Brown franchise program does not compel him to do that. They have nothing to do with it. That's strictly an individual situation. In other words, these are factors that are inherent in his business.

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[fol. 536] WILLIAM J. SEBASTIAN, called as a witness for the respondent, testified as follows:

Direct examination.

The witness lives in Santa Anna, California. He is a merchant and his business is a family shoe store. He is the owner of the store. Its name is Sebastian's Shoes, and it is located in Santa Anna. The population of Santa Anna is around 100,000. He does not know the population of the trade area that he would draw from. His shoe store is one of the oldest stores in Santa Anna, and he has been a Brown Shoe Company franchise since about 1926. The store itself opened back in 1906 or 1905. It was a department store then. About 45 years ago, it changed exclusively to shoes, around 1915 or 1916.

The witness does not have an interest in any other shoe stores. This was not his own store at the start. He was with his dad for quite a few years, and they worked as partners. He has been in shoe retailing since about 1926. In the department store he had some experience in small lines of shoes.

The Brown brands of shoes which he carries are, Roblee, Buster Brown, Air Step, Life Stride, Evans and Glamour Debs. He carries several other brands of shoes besides Brown brands. Those are Deb Shoe Company, Scooters, Edith Henry, and Selby Arch Preserver. Vogue Shoe Company makes the Scooters. As to whether he has carried other brands of shoes from time to time, that he hasn't named here, he doesn't remember any of them.

The Brown fieldman that visits his store is Val Kemp. He visits about 3 or 4 times a year. The witness has called on him to help with audits and invoicing, and then of

course he comes in when he is going through and visits with the witness. They discuss shoe merchandising. The witness makes out monthly reports. He uses the open-to-buy. He uses the Brown franchise program record system of accounting and inventory. He does not keep tab of the stocks of individual shoes. He does use their accounting forms.

[fol. 537] He did purchase group life insurance through the Brown program. He has never had occasion to compare the cost of that insurance with similar insurance he could purchase locally. He has been satisfied. He carries his business insurance through the Brown franchise program. He has never made a cost comparison on that insurance for what he could obtain it locally. The witness used the architectural services offered by Brown when he moved in about 1947. He has no idea what the cost of similar plans would run. He didn't check it. He was satisfied with the layout, and went ahead on it. He uses the window trim service. He has never obtained a loan from Brown Shoe Company. The window trim service is not free, it runs about \$50 a month, or about \$600 a year.

He purchases his canvas and rubber footwear from U. S. Rubber. He buys directly through the U. S. Rubber salesman. It's billed through Brown Shoe Company. He does not feel that as a Brown franchise dealer he gets a special price or any special terms on the merchandise. He just gets the good service, good line of shoes. He is sure he could get the same price and terms whether he was on the program or not on the program.

His store is a Brown franchise store because they have the merchandise he wanted, well advertised lines, and then too, he likes as few accounts as possible. The witness believes in concentrating the line. As to whether the program encourages this, the witness said, there was never anything brought up about it, but if they make the merchandise you like, you naturally will go right with them. He espouses line concentration because he thinks that's more profitable than spreading out with other lines. That's the way he feels. He has found that when you buy other lines, there is a lot of duplication. You can hardly help it. He does not think duplicating the same patterns of shoes, in the different brands, will increase sales.

Since he has been on the Brown franchise program, he has never been told by anyone connected with Brown that he could not carry an outside or conflicting line of shoes. [fol. 538] No one, to his knowledge, from Brown or connected with Brown, ever told him to get rid of an outside or conflicting line of shoes. No one from Brown ever told him that he must buy a certain line or lines of Brown shoes, none whatsoever. He does not have a written franchise agreement. He never did. As to what his understanding is as to when he may leave the franchise program, he said, I never had anything come up about it. I just feel that there is nothing binding, I can leave any time I want to. He does not feel that he has an obligation to Brown as a member of the Brown franchise program. He doesn't feel any obligation to them whatsoever.

. . . . .

[fol. 539] A salesman from the Juvenile Shoe Company has never called upon the witness to sell him shoes. He has looked into Clinics and Lazy Bones, but he didn't consider them, because they didn't fit in his program. Clinics are carried in his town about two blocks down from him in a store named Newcomb's. Lazy Bones are not carried in his town, to his knowledge.

He does not know how long he has bought Deb shoes. When they first came out, they were a pretty good line of flats. That must have been around 1948 or 1947. He has carried them straight along ever since then. He has been dropping them though because the fit is not what he wants, and the patterns don't fit in as well as they did at the time when he started. No one from Brown Shoe Company has ever told him that he couldn't carry Debs. As to whether anyone from Brown ever urged him not to carry Debs, he said, nothing has ever come up. That has been left strictly to my discretion.

He has never been called on by a salesman from the Freeman Shoe Corporation. That line is carried right across the street from him. The name of the store is Vandermast. It is one of the larger men's clothing stores there. A sales representative of Weyenberg Shoe Corporation has never called on him. They are not carried in town. If Massagic and Port-a-ped are carried, they haven't



advertised them, so he wouldn't know. He hasn't heard of them. The witness has never heard of the Huth-James Shoe Company. He doesn't know anything about the Leverenz Shoe Company.

He would feel no hesitancy about buying an outside line if it appealed to him. If it fit into the picture of his business, he'd buy it with no hesitancy whatsoever. If it happened to conflict, as to whether he would feel any hesitancy then, the witness said, I don't know if I would be interested, if it conflicted, because I'm satisfied with what I have. His reason then, would not be because he is a Brown franchise dealer. He said, I wouldn't be concerned about that at all.

[fol. 540] Cross-examination.

He has never figured what percentage of his inventory is Brown, but he would presume it would be somewhere around 65 or 70 percent, somewhere in there.

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LEROY C. SAMUELS, called as a witness for the respondent, testified as follows:

Direct examination.

His residence is in Encino, California. He is in the retail shoe business. He owns two shoe stores and is part owner of a third. The two shoe stores he owns are located at Compton and Sherman Oaks, California. The Sherman Oaks store is presently on the Brown franchise program. It went on the program approximately June of 1959, when he was planning to open the store. It hadn't been a shoe store before, it was an empty lot. The building was being constructed for that purpose.

The lines of shoes he carries in that store are, in women's lines, Naturalizers, Life Stride, Glamour Debs and also Varsity Vogues as a major line, which is a branch of Robin Hood. Then he has a few other lines which are not principal sources that he uses from time to time, such as Pierre, the local jobbers, Delmode. At this time of the year he has summer sandals, Italian imports, which will vary from time to time depending upon the source. Imports

would include Lujanos. In his men's lines he carries Florsheim, Roblee, Pedwin. In children's lines he is almost 100 per cent Buster Brown. He will, from time to time, supplement that with merchandise he feels is timely. His store has carried a few shoes in the children's line from Virginia Shoe Company. It does a wonderful job with Wolverine Shoe Company, which makes Hush Puppies.

As to canvas or rubber footwear, he carries rubber footwear primarily from U. S. Rubber and supplements it with Red Ball Jets and P. F.'s and Randolph Manufacturing. The merchandise which he purchases from U. S. Rubber compares sufficiently with his B. F. Goodrich or these other items to compare prices. They're all the same, except Randolph [fol. 541] dolph, which is not a competitive line. But the P. F.'s and the Jets and Keds are all comparable and competitive. They all offer the same price. In other words, if you buy the volume quantity you get the same price, the same discount. As far as the witness is concerned, it's absolutely uniform between those rubber companies. U. S. Rubber is invoiced through Brown Shoe Company. P. F.'s is a trade name, but it is distributed both through the Hood branches and the Goodrich branches. Manufactured by the same company. That would be Goodrich. P. F. stands for "Posture Foundation."

The witness carries his business insurance such as casualty insurance, in regard to his Sherman Oaks Store, with a local agency, with the exception of a small burglary policy which was obtained through the insurance offered by Brown Shoe Company. He buys his insurance locally because he has equal or better coverage for the same or less premium, plus the fact he likes local service.

. . . . .

[fol. 542] As to whether the term "line concentration" has a meaning to him, he said, it's an advantage. I feel that if we have a principal line it's foolish to go into a competitive line for one or two items, because eventually you get more and more duplication, resulting in a greater inventory and more markdown, so that if the principal line has something that is comparable to competitive lines there is no reason for us to put it into the competitive line.

As a participant in the Brown franchise program at his

Sherman Oaks Store, he is in no way restricted in the lines of shoes that he may choose to buy. The lines he chooses to buy are determined solely by his own opinion as to their value, their worth, how they fit into his store, whether he feels that they are good or bad. If a Brown line that he may be carrying did not perform in accordance with the manner he thought it should, he would be under no restriction or restraint in discontinuing it.

His store at Sherman Oaks has an outside sign, a hanging vertical sign, which is approximately 15 feet high and 3 feet wide, white plexiglass with black letters, each letter approximately 8 to 10 inches in height, stating, "Florsheim," and when it is lit at night it stands out very brightly, it is predominant. Then on the face of the building, in letters that protrude from the building, is the name "Samuels," and adjacent to that is an animated Buster Brown neon sign, and on the top of the marquee, in a type of recessed box, are the names, "Naturalizer," "Pedwin," and "Buster Brown."

Florsheim is one of the lines he carries in men's shoes. It could conflict with Roblee's better shoes, that is, Roblee's top price would conflict with Florsheim. But as a matter of merchandising he puts it into the Florsheim line rather than the Roblee. He uses the Roblee line as an [fol. 543] in between price between the Florsheim and Pedwin, which are two bigger volume lines with him than Roblee. His Pedwin in the men's line is the big line in Brown shoes.

As to whether he bought the Florsheim sign, the witness said, this is one of those dollar-in-hand deals. He is told the sign is worth approximately \$1,000, \$1,200. He paid \$500 for the erection of it. He got the Buster Brown sign from the Buster Brown salesman. He did not buy that. He thinks the salesman was allocated one a year, he is not sure, and the salesman gave that one to him. He had to pay for the freight and the erection. The other names that appear as part of his Samuel Shoe Store sign, such as "Naturalizer," and one or two others, the witness paid for that himself.

At his Sherman Oaks store he has never carried Clinics or Lazy Bones shoes. A salesman has never called on him to try to sell him that brand of shoes. He has never tried to

buy Clinics for the Sherman Oaks store, but for the Compton store.

He has never had shoes manufactured by the Deb Shoe Company, in his Sherman Oaks store. A salesman has tried to sell him there. As to the reason he didn't buy, the witness said, my past experience with them, both in the store that I mentioned first that I have an interest in, and trying them out again in the Compton Store, I found as a whole as to the patterns I had—not for the line but for the patterns I had—they were poor-fitting patterns. Service was not 100 percent. As to whether being on the franchise program at his Sherman Oaks store had anything to do with his decision, the witness said, no. If that were the case, then I wouldn't have even looked at them. Nobody from Brown tells him what lines of shoes to carry. Being on the Brown franchise program, he is not restricted in what lines of shoes he carries.

A salesman from Weyenberg Shoes Corporation, has never called on him at Sherman Oaks. A salesman from Huth-James has never called on him in Sherman Oaks. As to whether the Leverenz Shoe Company salesman ever called on him at Sherman Oaks store, the witness said, as [fol. 544] I recall, he has stopped in there relating to the other store, but not as to the Sherman Oaks store, because we carried it in the Compton store, but have never had them in the other store.

The witness has owned the store in Compton for 6 years. Compton is approximately thirty-five miles from Sherman Oaks. In a broad sense, it would also be a suburb of Los Angeles. It lies actually halfway between Long Beach and Los Angeles. He acquired the Compton store 6 years ago this September, in 1955. There was a present competitor in that store that had vacated approximately a month before to move to a larger location. The witness moved into the vacated location. That store went on the franchise program, he thinks, approximately within 4 to 6 months after he opened. Sometime in 1957 he went off the franchise program.

Just prior to going off the franchise program at his Compton Store, he was carrying the following lines: in ladies' shoes, Air Step, a few Life Strides, Jacqueline, made by Wohl Shoe Company, quite a few of the local jobber's casuals or flats, and shoes from Pierre Shoe Com-

pany. Children's were almost all Buster Brown, with a few American Juniors carried over from his original opening. In men's shoes he had Freeman, Roblee, Pedwin and some shoes from Calumet and Leverenz. He thinks one of the last two is a boy's line. They are both the Leverenz Shoe Company. The same salesman sells them to him. Also, he had some shoes from Brooks.

At that time, the Compton store had Red Ball Jets canvas and rubber footwear. He also bought from U. S. Rubber, as a supplementary resource to Red Ball Jets. The manufacturer that makes Red Ball Jets is Mishawaka Rubber and Wool Manufacturing Company. As to whether there were items of merchandise that he bought from U. S. Rubber, comparable to the items he bought from Mishawaka at that time, the witness said, it was strictly supplementary. If he wasn't able to get it locally from the Red Ball Jet Warehouse and U. S. Keds had them on hand, he would get them on hand. The prices were the same. Originally in that store he had P. F.'s 100 percent, but because of local [fol. 545] price differences with the merchants it made it rather awkward if somebody was selling them for 20 cents more or 20 cents less, and they couldn't get together on the price, and rather than go into this problem—because what would happen, for example, if your wife would go in his store and want a particular item for \$4.00 that was \$4.95 and she could go elsewhere and see it for \$4.75 she would take the opinion that perhaps all of his shoes were overpriced. And one of the other stores used the U. S. Rubber products as a leader at sale time, promotions, and so forth.

The Red Ball Jets, no one had and he could take them and sell them and not worry about anybody using them as a leader or as a football item. So this is why he switched. Basically their prices are all competitive as far as the dealer buying from the resource, prices are identical.

When he said, "people getting together," that's in relation to the retailers in his area. The witness said, we would mention to the salesman that we felt that there was a price difference. And in a small town they try to give an exclusive. Now, one man would have P. F.'s by Hood, another one would have P. F.'s by Goodrich. They are under different sales management. You can't very well go to a competitive line and say, "Get this man in line." Now also understand that they are not allowed

to order a price fix. All they can do is suggest what prices they would like to recommend without holding a stick over them. If the man doesn't go along with it there is nothing they can do.

The witness didn't go off the franchise program at his Compton store, he was taken off. This was when he replaced Air Steps with Red Cross shoes. That was, he thinks, in 1957. When he replaced Air Step with Red Cross shoes, no representative of Brown Shoe Company, by threats or other means, attempted to compel him to retain Air Step and not go to Red Cross. Putting in Red Cross was strictly his own idea. The witness said, however, I advised Mr. Kemp, the fieldman, at the time, of my intentions, and I won't say that he said it officially, I had [fol. 546] the feeling that I was doing the wise thing. But he advised me that I couldn't stay on the franchise plan under those circumstances.

As to the circumstances that contributed to his decision to put in Red Cross, the witness said he was selling approximately ten pairs of Air Steps a month and he put in Red Cross, and eventually worked them in, and he went up to about 100 pair a month for the same type of merchandise. Red Cross had previously been sold in his community by a man who had gone out of business. The occasion for his obtaining the Red Cross line was coincident with that man's going out of business. The Red Cross line had not been available to him prior to that.

As to whether, in a town of his size, the fact that one store would have a particular line, had a bearing on whether he could obtain the line or would want to carry it, the witness said, this is a double question. Actually he doesn't think one would carry it except in lines like U. S. Keds, of this type, but when it comes to a brand name, such as Red Cross, he doesn't think that they would give it to two firms in the same town of that size, unless one was a department store and one was an independent operation.

When people think of women's shoes the name Red Cross is number one, just like when you think of men's shoes you think of Florsheim. And that's what contributed to his decision, in obtaining Red Cross. Red Cross, from a shoeman's standpoint, is a broad line of shoes. They cover a category from an elderly matron to a young adult without going to extreme shoes that are strictly high fash-



ion. And they go into casual types, such as wedgies and oxfords. They carry some shoes that can be worn on the young teenage girl as well. So, you're covering an age group from possibly ten to one hundred. This is broad coverage.

As to whether that Red Cross line is as broad as any women's line in the country, he said he can't think of very many competitive lines, except possibly Vitality in a small way, and in still a smaller way Naturalizer and [fol. 547] Air Step, these same types of shoes, Energetic. They are different categories as far as quality and so forth in customer acceptance, but competitive. The witness thinks there was a previous brand identity of Red Cross in his community and nationwide that contributed to his decision to purchase them. In fact he would venture to say that it's almost international, the name of Gold Cross and Red Cross. That was a very important factor that influenced his decision.

After he went off the program, as to the immediate effect on his business, the witness said, I don't think the program, and that is what you mean, affected my business at all. My business increased, but not because of the lack of the program, but because of the increase in our Red Cross shoes and the association that was not put with the store with a name that was more well known. We got the mother in, and she brought her children in, and they in turn brought dad in. In other words, from going off the program, from the standpoint of his business, the witness was not adversely affected financially. Red Cross is made by United States Shoe Corporation.

After he went off the program the witness continued to purchase the same lines of the other shoes that he mentioned, other than Air Step. In fact, his Life Stride line increased considerably at the expense of Wohl Shoe Company, when he eliminated his competitive children's line, the few he had of American Juniors. And he would say as a whole, everybody benefited because our business picked up. He continued to be a customer of Brown Shoe Company. No one from Brown in any way indicated reluctance to sell him Brown line shoes, whatsoever. They came around the same as before, and in fact, Mr. Kemp still stopped in, although he had no obligation to.

In regard to the rubber goods that he had bought, he

continued to purchase these rubber goods from the same sources after he went off the program as he did before. The program affected his purchases in no way, before or after. The same prices were charged, before and after. The witness said he might add one thing. The relay in [fol. 548] billing through Brown gave him a 10 day advantage as far as the Sherman Oaks store was concerned. That would be the only thing that he could think of in the way of different terms. This is not intentional in the way of price or delay in billing, just a matter of bookkeeping and mail.

He did not, at the Compton Store, suffer any economic loss as a result of being off the Brown franchise program. And his gross sales improved with the addition of the Red Cross.

In regard to the Compton store he was asked whether he had any experience with the Juvenile Shoe Corporation, either when he was on the program or afterward. He said, at one time he went into the sample room during a shoe show to see if he could get the nurse shoes, which is the Clinic branch of Juvenile. That was before he went on the program, because he didn't have a nurses' line at that time. It is really a women-in-white service shoe. The salesman told him he had an account in that town that he was satisfied with, and he was not looking for another account, and the witness didn't get it.

The witness has had experience with the Deb Shoe Company in his Compton Store. As he recalls, he bought Deb shoes while he was on the franchise plan. No one from Brown told him he could not buy Deb shoes. He found the shoes not to be 100 percent fitters. Their service as far as fill-in orders and original orders was slow. He actually lost money on disposing of the shoes because he could not get his normal markup for them and had to put them out on sale to get rid of them. He returned some shoes to them that they did take back because of these reasons. He thinks he tried Debs again in his Compton store after the salesman called on him and said the situation was improved, but he found the same thing to prevail, and he gave up on them, and that is why he hasn't bought them since. He looks at the line, but that's as far as it goes. He has a bad taste in his mouth for them. His decision in not buying Debs was not in any way related to the Brown franchise

program. As to whether he continues to be of the opinion that he doesn't desire to buy Deb shoes since he has been [fol. 549] off the program the witness said, we look at the line, because they are highly styled, I mean, as far as styling they have a lot of advantages that other firms don't have—but we don't buy them, because, as I say, we feel that the shoes—because of our past experience with them we are reluctant even to try them out again.

The witness has had a salesman from the Portage Division of Weyenberg Shoe Corporation call on him. He has never stocked their shoes because he felt he could use only one shoe out of the line, their cushion insole shoe, and for one shoe he didn't want to get into another line. It didn't mean that much to him. The witness is not sure whether he made that decision while he was on the program, or immediately before. Being on the program would not have had any influence on his decision, because he bought Freeman shoes at that time.

He thinks he had Freeman shoes almost from the inception of the store. He opened the store exclusively with Pedwin and then he decided to grade up a little bit and put in Freemans. He continued to carry Freemans at that store, in a small way, until he got a letter from them that they were no longer going to sell him, that there was a competitor in town who wanted the line and they had given it to him and they no longer could supply the witness. The salesman came in and picked up a sign that they had furnished to him free and gave it to the competitor. That was in 1960, he doesn't remember the month. No one from Brown Shoe Company made any attempt to compel the witness to discontinue Freeman shoes in his Compton Store while it was on the franchise program. Not other than a salesman calling on him, like any competitive line would come in to sell him. They wouldn't knock the line, they would just try to sell him their product. Nothing in the Brown franchise program prevented him from carrying Freeman.

The witness never carried any shoes from Huth-James. But in about 1958 there was a salesman in to see him on two different occasions, and he's almost positive he was from Huth-James. The salesman had some type of [fol. 550] a promotion with school shoes, tying in with the school colors, as a gimmick to get a start in the shoes. The

witness didn't buy them. He felt, for the one type of shoe, here again for one item that wasn't that hot, why get tied up with another line.

He bought shoes from the Leverenz Shoe Company. He bought spot shoes from them when they had shoes that were not available from other resources and their prices were more desirable. They had a shoe a few years back called the Grasshopper, which was a tongue that worked on a mechanical gadget up and down, shoe lock deal, and their price was a more competitive price than Brown Shoe Company, so he bought them from them. It was awfully close to the period he was on the Brown franchise program when he bought them. It could have been immediately at that time or immediately after. He doesn't remember. As to the factors that influenced his decision to buy the Leverenz shoe, he said, this was something that was most desirable at that time, something that everybody wanted. If you didn't have it you just lost business, and you had to have it. The witness does not still stock the Leverenz shoe. He discontinued it when the style died out and there was no need to carry that shoe any more. He had sufficient merchandise. They were popular in 1957, 1958. He bought them more than one season and discontinued them when the popularity died out. To the best of his knowledge, no one in Compton stocks the Leverenz shoe.

As to his Compton store, when he went off the Brown franchise program there was no difference in the prices charged by Brown Shoe Company for any of the products which he bought. There was no difference in the credit terms. They were the same as before. No one from Brown attempted to use the franchise program to influence his decision adversely against stocking Red Cross shoes. That was entirely his own decision.

As to whether he talked to the Brown man before he made his decision, the witness said, I casually mentioned to Val what I was going to do. This is a situation you have to realize, that Val and I—at least I put myself in the position, I had a lot of respect for Val's opinion, [fol. 551] and many times we would get into a discussion of a family type. Many times we agreed, and many times we disagreed. But with this sort of relationship you can talk

these things over, and this is the situation that happened. I don't recall the exact conversation that took place. The witness told him what he was going to do before he did it though. The witness said, I didn't ask him, I told him. Let's put it that way. Because this is something that—there was no advantage for me to keep on with the Air Step line when I could take a line like Red Cross. As to whether the fieldman told the witness he'd have to go off the plan, the witness said, I don't remember his words. He probably indicated so to me. This was followed up by a letter from Mr. Johnson that I no longer would be on the franchise plan since I put in Red Cross shoes. But the witness went on and put in Red Cross anyway. This was prior to his Sherman Oaks business venture.

In regard to his Compton Store, he had his own identification sign while he was on the franchise program, and he had a Buster Brown sign on the face of the store also, a small vertical sign. He thinks it was put up after he went off the franchise plan. In regard to his Compton Store, he did not have his insurance under the Brown franchise program. He handled that locally for the same reasons he gave in reference to the Sherman Oaks Store.

#### Cross-examination.

The witness has used the architectural service provided by the Brown franchise program once. He found it very beneficial. He has been offered the window trim service provided by the Brown franchise program. He doesn't use it. At the present time he would say approximately 80 percent of the inventory in his Sherman Oaks store is Brown.

The U. S. Rubber salesman suggested that he carry the U. S. Rubber brand of rubber and canvas footwear at his Sherman Oaks Store when he went on the franchise program in 1959. The salesman was not accompanied by the Brown fieldman. As to what advantages, if any, [fol. 552] the salesman told the witness there would be in having the U. S. Rubber products billed through Brown, the witness said, he didn't. The reason we took on U. S. Rubber, my mind was made up beforehand to use U. S. Keds, because the "Keds" is synonymous with canvas footwear. People would come in and ask for a pair of Keds, they don't

necessarily mean U. S. Keds, they mean a pair of canvas shoes, because Keds is synonymous with canvas shoes, and it's the easier thing to sell. The salesman did not say anything that made him think that it would be more advantageous to him to have them billed through Brown rather than by U. S. Rubber. They did this on their own. He doesn't know why they did that. As to whether the witness started getting U. S. rubber and canvas footwear at the Sherman Oaks store before he went on the franchise program, he said, the Sherman Oaks Store from its inception was on the Brown franchise plan. Before the building was up he had made arrangements.

. . . . .

[fol. 553] Q. Have you ever signed a Brown franchise dealer contract?

A. Yes. I have.

Q. Did you sign one on both of your stores?

A. Yes.

Q. Now, you stated that you felt that you were not restricted as to what shoes you might carry by being on the Brown franchise program, isn't that correct?

A. Oh, I reaffirm that very definitely.

Q. Well, do you see any conflict between your statement there and the language of the Brown franchise dealer contract, which states that you promise to concentrate on Brown shoes and to have no conflicting lines?

A. I think your question, the way it is put, is not a fair one to me. The way it's stated there, I feel that I have the right to choose whatever I want. They stated in the agreement there that—I don't—you probably have a copy up there exactly how the thing is worded—they had no time said anything to me about these lines. For example, the Life Stride and the Jacqueline are as competitive as can be.

Hearing Examiner Creel: They did say something to you about the Red Cross line.

The Witness: Pardon?

Hearing Examiner Creel: They did say something to you when you took the Red Cross line, didn't they?

The Witness: They told me I could no longer be on it.



By Mr. Timony:

Q. Could you put Red Cross into your Sherman Oaks Store if you had the opportunity?

A. I don't know. I don't think so.

Q. Why?

A. Well, I would say that the Red Cross line and the Naturalizer line are pretty much even right now as far as customer acceptance is concerned. The Naturalizer line was not available in Compton when I replaced the Air Step line. If I were to open up more stores I would want to, for merchandising purposes, stick to the same lines I [fol. 554] have, and I feel would be safer in taking the Naturalizer line than I would the Red Cross; because the Red Cross people have, for example, a policy out here, they give the May Company a 10-mile radius protection, so any new store opening up within a 10-mile radius of the May Company can not get Red Cross shoes. So actually I would be hurting myself for future stores.

The witness could not get the Naturalizer brand in Compton because it was taken by another store. In other words, it was already placed in the town. He doesn't know whether he would have taken it in preference to Red Cross if they had both been available. The other store still has Naturalizers. It is not a Brown franchise dealer. Volume-wise they are in the same bracket as the witness is in.

Redirect examination.

The witness had made the decision to put in Red Cross before he talked to Mr. Kemp. Mr. Kemp in no way attempted to use the Brown franchise agreement in an attempt to dissuade him from that decision. As to whether Mr. Kemp made any reference to it in any manner, the witness said, it's been a long time, but as near as he can recall, an informal statement that he probably wouldn't be on the franchise program if he put in the Red Cross shoes. He doesn't like to make this a definite statement, because it's been so long. He had already made up his mind. The line had already been arranged for. In fact, the line had been arranged for 6 months prior to it actually going in. The witness thereafter eliminated the Air Step line gradually, by merchandising them out. He stopped purchases for replacements.

Q. Did the fact that you might go off the program as was suggested in any way dissuade you from your decision to stock Red Cross?

A. No. No, the decision had already been made.

Q. In other words, it was the desirability of having that line in your store?

A. That's right.

[fol. 555] Recross-examination.

The witness found the advice of Mr. Kemp, the Brown fieldman, very beneficial and helpful to him. As to why he didn't confer with Mr. Kemp prior to taking that rather drastic step in putting in a brand new line, the witness said, I have been selling shoes for 30 years, with the exception of some time in the Service, and there are certain things, that, for example, you as an attorney know to be better than other things, and this is one of them, I mean. In fact, you wouldn't have to be in the shoe business very long to realize, you're only selling 10 pair a month of a certain product, that any change would be better, and here you're getting the most accepted line, or one of the two most accepted lines in the country. Now, I don't think this is anything that you would discuss with Val. In merchandising, no two problems are alike, what is good in this corner is not good in that corner, and all you can do is converse with someone like a fieldman to get his opinion if you're in doubt and get a cross-section. Actually what you do by talking it over is analyze them and getting another person's opinion and get the best results. Certain things are facts, there is no getting away from them.

As to whether he took into consideration that he was going to lose this very helpful advice of Mr. Kemp in his Compton store when he took on Red Cross, the witness said, actually I didn't lose the advice of Mr. Kemp. I may not have it officially, I don't know what his instructions were. I never lost it. Mr. Kemp still came to my store, we still conversed. There were times I talked to him about locations in the interim. I never even considered that a factor.

### Further Redirect examination.

The possibility of installing a store at Sherman Oaks had not materialized at the time he went off the program in 1957. This was a subsequent decision.

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[fol. 556] EDWARD FUHRMANN, JR., called as a witness for the Respondent, testified as follows:

### Direct examination.

The witness lives at Long Beach, California. He is a shoe store retailer. He is part owner and manager of Fuhrmann's Lynwood Bootery, located in Lynwood, California. The approximate population of Lynwood is 30,000, and the approximate population of the trade area from which that store draws would be possibly 50,000 to 60,000. In the immediate vicinity, there are other shoe outlets, including Kirby's, Hudson's, a juvenile shoe store besides his own, and a men's shoe store which does a very large business in men's shoes and related footwear. A little farther away is a Sears, Gallenkamp's and Thom McAn, and in the other direction, a store called Mel's, which is a clothing store and has a leased shoe department, and another clothing store which has a leased shoe department. All of these stores are within three-quarters of a mile. Then going out to the outer fringes, he overlaps a little bit with some stores in Compton, which would be Kerr's, Samuels', Jack's, Beetler's, and perhaps another 10 in that area. Thus, in total there be roughly 25 to 30 shoe outlets in the trade area he thinks he draws from.

His parents started this store in 1934. He worked in the store while going to school, Saturdays, summers and so forth. He was away at the university for a number of years and was away from the business at that time and was in the "Service" for 4 years. Aside from that, he worked off and on. Then he went back into the business on a full time basis around 1946 or 1947. He and his wife went into business on a full-time basis and continued from there.

His parents opened a new store originally. This store

is on the Brown franchise program. He believes that it joined the program in 1955. Neither the witness nor his parents have any interest in any other shoe store.

The witness is a college graduate and is teaching a course at Compton College in retail store operation and management during the fall semester, each fall.

[fol. 557] He carries the following Brown brands in his shoe store: Roblee, Pedwin, Buster Brown, Air Step, Life Stride and Smart Aire. He used to carry Robin Hood, but not anymore. He also carries Glamour Debs, it comes out of the same division. Outside of these Brown brands, he carries in men's: Florsheim, Hush Puppies, and in women's Sbicca, California Cobblers, Delmar, Hollywood Scooters, and off and on he would carry a brand and then discontinue it. He is thinking of the primary ones, which are all he can think of offhand. He also carries Clinics. In connection with the Florsheim's men's shoes, that is a key item in his operation. As a matter of fact, even with the higher prices, he sells more Florsheims than he does in the next price range lower than that.

Mr. Kemp is the Brown field man that visits his store. He visits the store 2 or 3 times a year. The witness makes out monthly reports and the open-to-buy. He uses the record system of the Brown franchise program primarily, but also uses a double entry system in addition to that. This is his own modification. He does the Brown monthly report and then transforms from that into a different system because he likes to look at it both ways. He uses some of the life insurance available through the Brown franchise program, but not all of it. He has a life insurance policy and a liability policy, and also fire and property damage policies. In reference to life insurance, the witness has just one policy, which is on him. It is actually paid by his mother to buy out his interest in the business in case he should die. In other words, to pay his wife. He does carry fire insurance through the Brown franchise program, but plate glass insurance he carries through a different insurance agency.

Several years ago he had occasion to compare the cost of the fire and extended coverage that he buys through the Brown franchise program, with that which he could obtain locally. He had gone on the franchise program for a num-

ber of years, and he reinvestigated his insurance set-up, and he compared prices and found that there is a certain amount of savings with the Brown set-up and for that reason he changed to it. He is unable to remember exactly what the savings amounted to, but it was enough [fol. 558] to make the change. He didn't know how much. He would say it was less than \$100.

As to his use of the architectural services that Brown offers, he thinks that the first year they went on the program they were thinking of a little remodeling, and he wrote to the franchise division, or to someone, and they sent him some ideas and a plan. As it turned out he never used it, but he did ask for the service and received it. He got a blueprint. He sent them the dimensions of the store, and they sent a blueprint back suggesting changes in the arrangement. He has never had occasion to get a value on this type of service or compare the cost with what he could obtain locally. He wouldn't think of the cost, because he has used this type of thing from other sources and never does pay. He figures that if someone is going to sell him something, like hardware fittings or paint he expects them to give him advice. He is not going to pay them for advice. They can give him advice and that's part of the service. To his knowledge that type of service is available from fixture suppliers. He has used it in the last year or a year and a half. He does not know whether that type of service is available from other shoe manufacturers.

The witness carries canvas and rubber footwear. His primary supplier is Hood Rubber Company. He's been with them for many years and likes their products. That's B. F. Goodrich Company, Hood Division. He use to carry some U. S. Rubber products, and then less and less, and he thinks within the last year probably none. No one from Brown ever attempted to coerce him into buying U. S. Rubber products. He has no occasion or reason to believe that if he purchased canvas and rubber footwear from the U. S. Rubber Company through the Brown franchise program, or as a dealer on the franchise program, that he would get a better price. The only thing that he would think of, was that the invoicing would be the same as Brown invoices. But the discount is the same, so he

sees no particular advantage. He never did see an advantage.

No one from Brown has even told him in connection with the franchise program that he couldn't carry an outside [fol. 559] or conflicting line of shoes. This had never occurred. No one connected with Brown has ever asked him to stop carrying an outside or conflicting line of shoes. And no one from Brown ever told him that he must carry any certain Brown line or Brown brand of shoes. Not when you use the word "must". The salesman always tries to sell him merchandise and that comes from any company.

Q. Do you know whether you have a written franchise agreement?

A. Yes, I have.

Q. Have you had occasion to refer to that in the last several years or any time since you've had it?

A. I haven't looked at it since I signed it. As a matter of fact, my father was still in the business at the time we signed that, and we were in a four-way partnership, my mother and my father and my wife and myself, and I think my father then and I signed the agreement at that particular time, and he's been out of the business for a number of years and I haven't had occasion to look at it.

Q. What, if anything does the written agreement mean to you?

A. Well, to me it means the relationship between Brown Shoe Company and us, that we try to help each other as much as possible, and otherwise nothing.

Q. Has anyone from Brown Shoe Company ever pointed out any place in the written contract where you should not buy outside lines and attempted thereby to discourage you from buying outside lines of shoes?

A. No.

Q. Never since you've had it?

A. Never.

The term "line concentration" is meaningful to the witness in connection with shoe retailing in the sense that if it is properly used it can make a more profitable business. He thinks there is such a thing as overdoing it, too. The witness said, the more time you can concentrate on buy-



ing a smaller variety of brand shoes, from the buying standpoint, the more you can concentrate on that the better job you can do. This is brand emphasis. The same thing applies to it from the standpoint of relationship with the customers. The less brands you have, number of brands [fol. 560] you have to promote to the customers, the more you can concentrate on those particular brands, and the more impact you will have. And then it becomes an easier bookkeeping problem, I believe, if you have less companies to deal with. The way it is, I have mentioned a number of different companies and just in the mere mechanics of computing discounts on invoices, it doesn't make any difference whether you're computing the discount on a \$500 invoice or a \$30 invoice, the amount of work is the same, you still have the check to write, the amount of time involved is the same, except the more resources you're using the more time consuming the bookkeeping, and so on.

The witness does not think that additional brands of the same basic types of shoes, same patterns and same price category would normally increase his sales. Not unless there was a very unusual situation where a particular specific pattern had been widely promoted, due to national advertising or something. This would strictly be an exception he would say, normally not. There is no question about the fact that additional brands with the same patterns as he already has and in the same price category would give him additional inventory problems. The theory is that the more sales you can make on the smaller inventory the higher your profit will be, all other things being equal. As to whether there is a limit to the number of shoes that he can normally take into inventory at any given time, he said, only in the sense that he figures as merchandise budget and tries to stay within it. If he goes outside that budget his mother, who is still a partner in the business, will object that he has spent too much money and overdrawn the budget, and she will make him justify why he increased the inventory.

Regarding the factors that normally determine the amount of inventory that he would carry at any given time, the witness said, start with estimated sales, and reduce it to cost, and take into consideration the amount

of times turn you expect to get on the basis of past experience, and that would be different with different types of shoes and different categories, and that would determine what your average inventory should be. The witness was asked taking into consideration inventory limitations, [fol. 561] whether it was more important to have additional brands, duplicating patterns and categories of shoes in the same price, or to have additional sizes in brand concentration. The witness answered, if you assume, as he is willing to, that generally you carry the best selling pattern in the best selling brand and in the best selling price range, then it is far better to concentrate just in that one item. You have less money invested in inventory and a greater potential turnover, which should increase your profit.

As to the times the witness tends to operate as an exception to his belief in line concentration, he said the exceptions sometimes might or might not be the difference between a profitable and non-profitable operation too, because the shoe business is so highly fashion conscious these days in the first place that one line of shoes can be very strong in 80 or 90 per cent of the patterns and very weak as far as public acceptance is concerned in a small part of that. It might be that a competitor on that one-tenth or one-twentieth of the line might have a pattern that will far outsell it, and as far as I'm concerned this is the exception to line concentration. You don't carry the line in all of its strong and its weak points if you're going to be a smart dealer and make money, I think. Because after all, I'm in business to make money for Fuhrmann's Shoe Store and not for any shoe company or manufacturer. Where the exception is on that five or ten per cent, if someone has a pattern that the public wants or that I think the public will buy, I don't believe there should be any restraint on me, I should go out and buy that pattern from another company. This is the way I feel about it, and this is the way we do.

He thinks it's good business to concentrate with a single brand line of shoes in a certain price category if it supplies his needs adequately, and then, wherever he feels there is a weakness, then go out and try to find something to fill the weakness.

Q. You mentioned that you didn't think you should be restrained from buying any shoes whatsoever. Are you restrained at all?

A. No.

[fols. 562-563] Q. As a member of the franchise program?

A. No.

Q. In any way, shape whatsoever?

A. No.

Q. You feel completely free?

A. Oh, yes, yes.

Reference was made to the fact that the witness teaches a course in retailing. These principles of line concentration that he has been describing are generally accepted throughout the shoe retailing business. Last fall was the first semester that he gave the course and he is ready to repeat it the first time. He expects that this fall 60 per cent of his students will be sales people, stock clerks, assistant managers, and so on, from various retail organizations, and perhaps the other 30 or 40 per cent will be undergraduate students of freshman and sophomore level in college. Because there are courses available for large retail organizations this course is mainly adapted toward smaller retail organizations. So what he's talking about to these students is not shoe stores but women's clothing stores, hardware stores, jewelry stores, and he tries to teach it in such a way that if there is a common denominator of principles involved in merchandising, that's the way he tries to operate. And he would say, generally speaking, that the principles of line concentration, with the limitations and the exceptions he has mentioned, are good business practice, whether it happens to be in reference to a jewelry store, or women's clothing store, or something else. He definitely believes that this principle applies throughout the shoe retailing industry.

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[fol. 564] The witness carries Clinics. Just as a matter of interest he checked the other day the number of Clinics he [fol. 565] buys in any given year. He pulled out a 1960 file and made a count as to about 4 patterns of nurses' outfits only, that he used last year, and that amounted to a

little over 350 pairs, just those four patterns. This year it will be higher, because he is selling more and they've added another real hot pattern now that's going very well.

He buys Lazy Bones Juniors children's shoes when he feels that they have something he needs. He did last year. As a matter of fact, they had one particular pattern that he bought quite a lot of. Brown Shoe Company has never objected to his buying from Juvenile Shoe Company. They have never attempted to discourage it in any manner. He does not buy more Lazy Bones shoes because generally speaking the Buster Browns sell better, but once in a while he feels that Buster Brown doesn't have it in a certain type of pattern, and if Lazy Bones or somebody else has it better he feels that that's where they ought to go.

He has not purchased any shoes from the Deb Shoe Company recently. He thinks the last purchase from them might have been as long as 6 or 7 years ago. Prior to that for a number of years he was a constant purchaser from Deb. He honestly doesn't know whether he stopped doing business with Deb before or after he went on the franchise program. He stopped doing business with Deb because there was a period of about the last year when the merchandise kept getting worse and worse, and finally the last straw was when he got a shipment of 72 pairs, and they were really awful. He told Deb to take them back and they didn't, so that was it. He said, "No more." The shoes looked like a lot of seconds that somehow slipped by an inspector. The lasts were crooked, the toes were crooked, there were wrinkles, and where the front part of the vamp is pulled over there were notches and nicks in the sole edgings. These were the saddest looking shoes you ever saw—getting pretty bad.

The company did not take the shoes back when he asked them to at first. Because this was sort of the last straw, so to speak. There had been a number of poor shoes which had come in, some of which he had sent back, maybe one [fol. 566] pair at a time, which Deb accepted, and others they had to mark down to get rid of. They did not take them back and he still had the invoice, which was unpaid. A friend of his is an attorney and he asked him how he would stand on this thing if he got a couple of witnesses who were shoe men to take a look at the shoes, so that they

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could also testify that they were very poorly made, and the attorney said all right, so he went ahead and had the witnesses look at the shoes, and then he told Deb Shoe Company that the shoes were theirs and he was not going to pay the invoice. They dunned him a couple of times for the invoice and threatened to report it to Dun and Bradstreet, as a poor credit risk, which of course he doesn't like, he likes to maintain a good credit rating, but eventually the salesman came around and picked up the shoes.

For a number of years he carried shoes made by the Freeman Shoe Company. He does not still carry them. He fought a losing battle as far as sales were concerned in the Freeman line. His folks put them in long before the war, it might have been 1936 or 1937. They did fair with them after the war, and the sales did not improve, in fact they went down a little bit in proportion to some of the others, so finally, although they were always convinced that Freeman was a very finely made shoe, they could not convince enough customers of it. He would say, "This is a Freeman" and the customer would say "What's that?" And when you get too many of them who say "What's that?", then it's time to change brands as far as he's concerned. At the time that he discontinued Freemans, his had been the only store in that immediate area carrying them. When he discontinued, one of the large clothing stores took over the line. No one from Brown objected to his carrying Freeman shoes. No one from Brown objected to his carrying Deb shoes. And, no one from Brown tried to persuade him, as a part of either coming on the franchise program or staying on the program, that he must get rid of Deb or Freeman shoes.

In regard to how well Freeman Corporation aided him as a dealer in merchandising its brand shoes, the witness [fol. 567] said he thought that that was the main problem. Whether that is true in other locations he did not know, but one of the brands he put in to replace Freeman was Florsheim and the two were just exactly at opposite poles. With Freeman he had but relatively little promotional aids or relatively little push to help them obtain brand acceptance and that was true not only of his store, but in his personal opinion it was true all over Southern California. By contrast, Florsheim, which is a very fine shoe, had

customer acceptance, and the reason they have customer acceptance is that they go out and push the line. They help advertising. They help with the interior window trims, some of which they charge the dealer for and some of which they don't. They do not give cooperative advertising. The witness meant interior advertising, display set-ups and so forth. The minor ones are free of charge, the major ones they charge for. They advertise nationally in magazines. The whole thing that goes with national brand acceptance, every way you can imagine, that's right where they're pushing all the time. He has one small sign from Florsheim Company on the outside now, and he has another going up in about a month. The new one coming in is 15 feet high and 15 inches wide. It's one of the new type plastic signs and it will say "Florsheim Shoes". It's going to replace a present sign, a neon sign that he has. Florsheim is paying for the sign. They are loaning it to them in other words. The agreement he signed with Florsheim was that they will not charge him for the sign, and if at any time he stops carrying Florsheim Shoes then they want it understood that the sign belongs to them and that they can take it back. He pays for the installation only. He judges the value of the sign itself of around \$1,200 roughly. That has not been confirmed by a representative from Florsheim. He just looked around to get ideas as to roughly how much it was worth.

Occasionally he has signs from the Brown Shoe Company, but not outdoor signs, but interior signs, sometimes two feet by one and one-half, not neon signs. These are supplied by the separate brand division of Brown. He would say that he expects interior signs of that type from any [fol. 568] brand of shoes he carries, whether it's Evans slippers or Daniel Green. None of these signs have been given to him in connection with the franchise program as far as he recalls. Nobody tied it in with the program.

The witness carried Weyenberg Port-O-Ped for about a year, some years ago. Although he thought it would be a good selling shoe, he tried it for a year and it didn't sell well, so he discontinued it. He does not know what type of outlets sell the Weyenberg brand in Southern California. He does not recall any salesman from Huth-James calling upon him. He is not acquainted with the



man. Their brand names, Sno-Go, Sturdy Styles, Throw-aways and Little Troopers are not familiar to the witness. Leverenz Shoe Company, which makes Calumet and Lake Line, is not familiar either.

Q. As a Brown franchise dealer do you feel that you have any obligation to the Brown Shoe Company in return for being on the program?

A. No, not in that respect. Only the 30-day invoices I owe them, like I owe everybody else.

Q. I'm not referring to that, I'm referring to any——

A. You mean any obligation that I——

Q. To buy Brown shoes, or to buy a certain amount of Brown shoes.

A. No, I don't feel that way. Definitely.

The witness is teaching his course at Compton College, Compton, California. It is a college credit course carrying three units of university credit, lower division credit. He has a California teacher's credential, general secretary, which is required to teach the course.

#### Cross-examination.

The witness testified that he felt no obligation to buy Brown shoes because he is on the Brown franchise program, and that he was not restrained in any way, shape or form by being on the Brown franchise program, and also, that he signed a Brown franchise contract. He is sure that he read the contract at the time he signed it. He did not recall reading a provision where he promised [fol. 569] that he would concentrate on Brown lines and would have no lines conflicting with Brown. He hasn't read it since he signed it, and he imagines there is something there. At the time he signed the agreement he was already carrying, he thinks, 5 brands of Brown Shoe Company, and the Brown franchise man said, "You're already carrying 5 brands of Brown Shoe without being a member of the franchise program, so why don't you sign the agreement" and he did.

Q. But you do feel obligated, don't you, to buy Brown shoes because you're getting these benefits and services under the Brown franchise program?

A. No, I wouldn't say that. I would look at it this way.

I think, I vaguely recall, and one of the reasons I signed it—I'm sure there is a cancellation clause in there that either of us can cancel it without reason. I'm sure there is some type of a thing in there. But the way I feel about it is this: I deal with the Brown Shoe Company Brands because I think they're doing a good job for me, and I make my living at this. If I didn't I wouldn't carry them; and if at any time I feel that they are not doing the job for me I would feel free to drop the line, or drop the whole program. And I feel that Brown Shoe Company is probably the same way, if at any time they don't like the way I'm doing business, why, they probably would cancel also.

I happen to be a pretty independent sort of person, and my father was pretty much the same way, and we have a very decided feeling that we like to run that business, because it's our money and we're the ones that have to pay the bills, and that's it, and we don't like too much other people telling us how to do it. That's the general philosophy anyhow that we use in operating this business.

Hearing Examiner Creel: But you carry out your agreements, don't you?

The Witness: I would say this, generally speaking. My agreement with them, as I understand it, was that I'm more or less concentrating on Brown brands because I think they're going to do a good job for me. And I do. I concentrate pretty much on Brown brands.

[fol. 570] I just believe that if I should go out and buy a pattern here and there from somebody else, I think I should do that, too. I concentrate pretty much on Brown, yes.

Some of his patterns or lines other than Brown conflict with Brown lines, in certain cases, in that sense that the patterns duplicate each other in the same price range for example. A very good example is Clinics. He sells a lot of Air Steps, and Air Step has a certain group of patterns which look almost exactly like the same patterns that he carries in Clinics and they're in the same price range. He carries the Clinics because the name is better and they are more saleable and the Air Step salesman feels the same way about it he's sure. In this particular case it would not be an inventory problem in the sense that he has, say, 5 patterns he's buying here in a group, from one company,

that otherwise he'd be buying maybe from Brown. His total inventory picture would be the same. True, he's dealing with another company, which causes a little extra book work and so on, but he feels that this is more than going to make up for that, because he's going to sell more Clinics in this case than he would otherwise. He doesn't order the same shoes from Brown, the conflicting shoes.

#### Redirect examination.

The witness does not buy Brown brand lines in order to carry out his franchise agreement. He buys Brown brand lines because he thinks they are the ones that will sell. If there comes a day when he doesn't think those are the ones that will sell, there is no question about it, then he will buy something else.

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ARPAD LAZAR, called as a witness for the Respondent, testified as follows:

#### Direct examination.

The witness is in the retail shoe business. He owns a store which is located at 10766 West Pica Boulevard in the [fol. 571] city of Los Angeles. He opened that store in 1950. It was opened as a new store and it is under his management and direction. The store is presently on the Brown franchise program, and it has been from the very beginning. The Brown brand shoes which he carries are Naturalizers, Life Strides, Smartaires, in women's shoes; Buster Brown for children; Glamour Deb for teenagers; Roblee for men; Pedwin for young men. Outside lines he carries from the Vogue Shoe Company, the Hollywood Scooter brand; also some teenager flats from Kismet and Busken. It is very seldom that he deviates in the types or brands of shoes that he carries. He doesn't find the need for it.

No one from Brown Shoe Company has ever attempted to tell him what lines he should carry or what lines he should not carry.

The witness buys some canvas and rubber footwear from two sources, the United States Rubber Company is one and a local agent of the Bristol Manufacturing Company the

other. He has no knowledge as to whether he receives a better price from U. S. Rubber Company by virtue of being on the Brown franchise program. Some special purchases come through direct from U. S. Rubber. As to why he has it billed through Brown, the witness said, because that's the way he started and it was convenient. Besides, there are restrictions that U. S. Rubber Company puts on seasonal buying, that he has to buy 40 dozen shoes at once for the spring season. It is possible to buy them—and he does not know whether this is due to the franchise plan or not—it is possible to buy them in 12-pair lots and still get his trade discount, which is an 8 percent special allowance on such purchases after the original buy is made. He is talking about fill-in orders.

The witness determines what lines of shoes he stocks in his store. As to the basis for such determination, he said, at the shoe shows he looks over some competitive lines, but he relies on the brands he has introduced, and it took quite a time to introduce them even though they were well known brands. In his neighborhood he has to introduce them himself. After he looks through to make sure that he is still on the right track, he will go back to his [fol. 572] original lines and make his selections on the basis of what he has seen. In making that inspection or survey, as he mentioned, he feels absolutely free to select whatever lines he might choose. He feels no restriction because of his being on the Brown franchise program that would prevent him from doing that.

The witness has a policy in the operation of his store as to whether or not to buy shoes that are in stock versus makeup shoes. It is his most important factor, because he is not large enough to back up his orders in sufficient quantities from the very beginning, and would not be able to have a selection of styles if he were forced to make, at the very beginning, large purchases in all the shoes he is buying. Without the possibility of filling in the sold pairs from stock he would be almost incapable of operating. He follows the practice of mail orders for fill-in. That would not be possible to do that with a shoe that is on a makeup basis. But it is possible on in-stock shoes. This is the most important factor bearing on the fact that he buys Brown shoes, besides the fact that the brands are well accepted. With some of the outside sources he has to rely almost ex-

clusively on the original purchase, because there are some restrictions on their selling. They will sell only 6 pairs to a width. He buys shoes in at least 3 widths, especially women's and girls' shoes, so that would mean a quantity of at least 18 pairs, in reality a minimum of 24 pairs, and still have an unbalanced stock. This problem has come up quite often, and when it comes to refills he is stymied, because most of the time he has to eliminate the possibility of fitting and just take what's coming in, through the most frequently asked for sizes, and these things have full bearing on the operation of the store. This is one of the important criteria he uses in making determinations as to the brands he buys. Even from Brown Shoe Company he will buy shoes that are in stock and will avoid buying makeup shoes.

The term "line concentration" means something to the witness, in the shoe business. He said, take the Naturalizer shoe. They are women's shoes, and they cover a long range of styles in heels and in looks of lasts. He [fol. 573] could almost manage the whole business with this line of women's shoes, and concentration on this line alone probably would do him more good than branching out into too many other shoes. To this extent from the franchise division of the Brown Shoe Company he has received very good advice, urging him not to buy too many lines, not even from the Brown Shoe Company. He well remembers a circular letter that stated, "Too many lines from the Brown Shoe Company will also do harm to you, so don't buy them all, buy just the ones that you feel are the best for you." He has been trying to follow that policy as much as possible, but being in the Los Angeles area he is faced with so much competition that even to the detriment of his own policies, he has to take such steps which are not absolutely correct. He means that he buys shoes which he knows he should not buy, because they are in style. In other words, he does branch out and buy other shoes. No one from Brown has ever made any attempt to prevent him from doing that. It is his decision.

The witness' store is located in the metropolitan Los Angeles area in a suburban shopping center.

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[fol. 574] The witness has never stocked any Juvenile Corporation shoes, Clinics or Lazy Bones. As he remembers the salesman from Lazy Bones was in the store once, but he did not buy them because the shoe is just about a \$1.00 below Buster Brown, and he said to the salesman that if he ever bought another child's line it would be above Buster Brown and not below. That was the witness' merchandising policy. Being on the Brown franchise program had nothing to do with his decision.

He has been called on by a salesman from the Deb Shoe Company, but he has never purchased them. He did not purchase them because they were a specific group of shoes and his investigation showed him, that they did not meet the quality demands which he has. He wanted shoes of better quality that would stand up and not bring discontent among his customers. His being on the Brown program had nothing whatsoever to do with his not buying the Deb Shoes.

He is not sure whether or not a salesman from Freeman shoes ever called on him. He knows there was a man in from Weyenberg, and the answer to him was that the witness' men's shoe business was lagging, and if he ever put in men's shoes, he would not buy a shoe that is in the same bracket that Roblee is, he would buy a shoe which is far above it. And he was thinking of Florsheim shoes, which are represented in many of the stores of similar operations to his. The fact that he was on the Brown franchise program did not have anything to do with his decision not to buy Weyenberg shoes.

[fol. 575] He does not recall whether a salesman from the Huth-James Shoe Company ever called on him. To his knowledge, a salesman from Leverenz Shoe Company, who sells Calumet or Lake Line shoes, has never called on him.

If any of the Brown brand shoes which he presently carried did not perform and sell well, he would have no reluctance to change to another brand. And the fact that he is on the Brown franchise program in no way restricts him from exercising his independent judgment in that respect.

#### Cross-examination.

The witness would say that 60 to 70 percent of his inventory is in Brown shoes at the present time. That's



in numbers of shoes. He went on the Brown franchise program when he opened his store, in 1950. At that time he did not sign a Brown franchise agreement and didn't even know the existence of such an agreement.

There are two different kinds of window trim service offered by the Brown Shoe Company. One is the window trim service for which there is a fee charged, which he never bought. The other is one which comes down in seasonal display material, most of the time free, or for a very small charge. It is given by the divisions. He does not think the franchise program has anything to do with it. The franchise program has the window trim, as he remembers, but he never bought it. As to whether he ever had occasion to use the architectural services provided through Brown franchise, at the very beginning he asked Brown to give him advice on how to set up the store, but he was pressed for time and never took advantage of it.

The witness had a loan from the Brown Shoe Company, in about 1953. He decided to take on a new line from Brown, and he could not finance it himself, and he asked for a loan and received a loan of \$3,000. That is the only one he has had. The witness uses the insurance provided through the Brown franchise program.

Q. Now, for these services and benefits that you receive through the Brown franchise, would you tell us your conception of what your obligation is towards Brown?

A. Well, there is no obligation whatsoever. The only thing that we are furnishing the Brown Shoe Company for, you know, is—might be considered as a service from our part, but I think we are serving our own purpose, is a copy of the monthly report what we are preparing for ourselves. The bookkeeping system furnished to us free by the Brown Shoe Company is the finest for the benefit of a retailer.

May I suggest here that I was in manufacturing and I also controlled some retail stores myself before I came to this country, and if we had this system what we are using now we would have been much better off and we could have progressed much better than we did. But the bookkeeping system automatically forces us to keep our records and keep them for our own benefits, and while we are doing it we are also making a duplicate and sending it to the

Brown Shoe Company, which is a statement, you know, enabling the Brown Shoe Company to give us credit.

Q. I understand the benefit to you from these benefits and services, but what I'm asking is what do you feel that you owe Brown Shoe Company because you are getting these very beneficial services?

A. Nothing, beyond paying my bills on time.

Q. Do you feel that you would get these benefits and services if you had 40 percent of your inventory in Brown shoes?

A. I think so.

Q. How low would it go, when would they stop giving you the—

A. I never tried to pin this down. I was never asked, you know, how much we have to get it. I never tried this, I can't answer you.

Q. Does the Brown fieldman ever urge you to get rid of lines that conflict with Brown?

A. No.

Q. Are you aware that he has instructions to that effect?

A. No.

. . . . .

The Witness: I was never told anything of that sort. I mean, it is the opposite of that. When I opened the store in 1950 I was almost surprised to hear from the fieldman that in Los Angeles you cannot open a shoe store [fol. 577] without the product of the Vogue Shoe Company, and he took me himself and introduced me to the salesman of the Vogue Shoe Company. So I was with the fieldman all the time, because I asked his help. I did not have the experience in retailing in Los Angeles. I started completely new. I had experience in the shoe business but this took me completely back, I couldn't understand it, you know, how a man from the Brown Shoe Company, he should want me to buy all Brown Shoes, all of a sudden he takes me to a company which is outside Brown.

By Mr. Timony:

Q. Do you think he helped you quite a bit?

A. I think he did. At that time those shoes were necessary. Now they aren't.

Q. Is it possible that you couldn't have even started your retail store without the aid of the Brown fieldman and the other benefits and services that he offered on the Brown program?

A. I definitely state so. The reason I went to the Brown fieldman is because I felt he would give me the necessary aid to start out, because I didn't have retail experience in Los Angeles and in the United States at all. You probably have derived from my speaking, my accent, that I am not born in the States, I was not born here.

Q. I can state for the record that you have assumed our language and our methods of making a living very well.

A. Thank you.

#### Redirect examination.

The witness came to this country in 1940. He had been in the shoe business ever since 1922, before coming to this country. He had been in retailing only from the supervisory point. He never retailed, himself. There were 45 retail stores involved in the operation of which he was the supervisor. They were opened right after the depression, which also hit in Rumania, and in order to place the product of the factory they were almost forced to go into the retail business. And after they did, the managing of the retail [fol. 578] stores was taken from the previous personnel of the factory and he was in charge. It was his responsibility. With that background he came to this country, and in 1950 went into the retail business in Los Angeles and became a Brown franchise store. During the period from 1940 until 1950 he worked in a shoe manufacturing plant in Los Angeles for three years. His wife has her own specialty and he joined her in the custom-made sportswear business. She was in the sportswear business so he started managing her store. Until 1950 he and his wife did not have the financial means to open a shoe store, and that is the reason he had to be satisfied with doing something else until they made sufficient capital to start out in the shoe business.

July 18, 1961

JOHN P. MORTON, called as a witness for the Respondent, testified as follows:

Direct examination.

Mr. Morton resides in Eureka, California. He is a shoe merchant and owns 2 shoe stores. Their names are both the same, Hornbrook's Shoes. There is one in Eureka and one in Arcata. The approximate population of Eureka is 29,000. The population of the trade area that his store caters to is about 40,000 to 45,000. There are approximately 15 to 20 other shoe outlets in Eureka. The approximate population of Arcata is 4,000 to 4,500. The population of its trade area is approximately 15,000.

The witness has 16 years experience in shoe retailing. He came into a partnership in 1946, and from that time on he learned and managed the Eureka shoe store, plus overseeing the management of the Arcata shoe store since 1951. The store at Eureka opened in 1921. It is a Brown franchise store and became one in 1921. The store in Arcata opened in 1951. It is a Brown franchise store and became one in 1951. The Eureka store acquired another store and then moved within three months so you could [fol. 579] say it was opened as a new store back in 1921. Arcata was opened as a new store.

The Brown brands he carries in both stores are Air Step, Life Stride, Roblee, Buster Brown, Glamour Deb, Smartaire, and Varsity Vogue and Pedwin. Brands of shoes from other companies are Edith Henry, Perkies from Grinnell Shoe Company, work shoes from Santa Rosa Shoe Company, Wienbrenner Shoe Company, International Shoe Company, General Shoe Company, Vogue Shoe Company. There are various others too, Hush Puppies from Wolverine Shoe Company, Skooters from Vogue Shoe Company. In canvas shoes he goes into Mishawaka Rubber Company. The brand names are Red Ball Jets, Weatherproofs, Cords. There are several brand names in that company. There is the United States Rubber Company which includes Keds and Cadets, and Hood Rubber Company which includes Sun Steps. His main source of Canvas

and rubber footwear is Mishawaka for both stores. United States Rubber Company shoes and Hood Rubber shoes are sold in both stores. The brand of International shoe he carries is Grace Walker. The General Shoe Company shoe is an unbranded shoe from their Central Stock Division. Its price range is a low price range from \$3.98 to \$4.98.

The fieldman from Brown Shoe Company is Arthur Wensel. He has called on the witness approximately 6 months. Before that, the fieldman was Lou Robbe. These gentlemen come by his store between 2 and 4 times a year.

The witness makes out monthly reports. He uses the record system made available by the Brown franchise program. He buys group life insurance through the Brown franchise program. He has never made a comparison of that insurance with similar insurance purchased locally. He obtains his business insurance and fire insurance through Brown in connection with the franchise program. He has never had occasion to compare the cost of that to similar insurance purchased locally. He received architectural services from Brown in 1951, 1957, and 1961. There may have been another time which he doesn't recall. In [fols. 580-581] 1951 it was the remodeling of his Eureka store. In 1957 it was moving the Eureka store to a new location, and in 1961, it was the remodeling and expansion of the Arcata store. The witness did not attempt to get architectural services for this work locally. They had outside architectural work on other jobs. He is deriving a goodly benefit from these services. He uses the window trim service available through the franchise program and pays for this service. It varies according to the trim of the particular season. He would judge \$500 to \$600 a year.

In connection with canvas and rubber footwear suppliers, the witness obtains similar shoes from these sources so he can make a comparison of the purchase price in terms available from them. There is no difference in the costs from these three sources for like quantities as far as discounts are concerned, but occasionally he finds a better shoe in one line than in the other line at the same price or possibly the style would be better in one line than in another line. He has no reason to believe that, as a franchise store he receives any better terms or special discounts from the U. S. Rubber Company that would not be available

to him if he were off the program. In fact he tried to buy Cadets, maybe 3 years ago, and United States Rubber Company would not sell him, due to other commitments they had in his town. This was in connection with both stores.

Brown Shoe Company has never told the witness that he could not carry an outside or conflicting line of shoes. He has never been asked to stop carrying an outside or conflicting line of shoe. He has not signed a franchise agreement. Brown has never said he must receive any line or lines of Brown shoes. The witness determines the brands of shoes that he carries. He does this through experience and examination. He looks for quality, style, fit and price. It is quite variable. He does not feel any obligation to Brown as a franchise dealer. His decisions are his own. He doesn't feel that because he is a franchise dealer he must buy any certain brands or quantities. It is the witness' understanding that he can leave the Brown franchise program anytime he wishes.

. . . . .

[fol. 582] Salesmen from Juvenile Shoe Corporation, who make Clinics and Lazy Bones, have never called on the witness. He has called on them and has been refused. This occurred a year and a half ago. He was interested in their nurse type shoes called Clinics and called on the salesman at the Los Angeles Shoe Show. The man said the shoes would not be available to the witness because they already had an account in Eureka. No one from Juvenile has ever tried to sell him the Lazy Bones line. He would not be interested in buying it. He believes the line that he is already carrying, Buster Brown shoe, is a better line of shoe both from customer acceptance and fit, quality.

He has never carried the line of Deb Shoes. He has been called on by salesmen from Deb, and agreed to buy their shoes. This was in 1954 and 1955, during those two years. The salesman's name was Arthur Seran. The witness said, we detailed the sizes for both stores and he informed us that he had reviewed the situation in our town and decided not to sell us, and sell another competitor, this competitor being Gregori Shoes. Gregori's is a family shoe store across the street from the witness, about two doors. The



Deb salesman offered to give the witness the Demoset brand on the same shoe. He refused the Demoset brand because, first, the Deb brand was much more important as far as customer acceptance, and secondly, it was rather insulting to be refused after he had agreed to buy the shoes. These Demoset shoes are the same shoes as the Deb shoes, but with a different label.

The witness has never been called on by a salesman from the Freeman Shoe Company. He has had occasion to have coffee with the gentleman and talk to the gentleman several times. The gentleman has never attempted to sell him shoes. He had a satisfactory account in Eureka. The witness has never had a salesman from the Weyenberg Shoe Company. He knows they have an account in Eureka. He [fol. 583] is almost positive that they have an account in Gregori's Shoe Store. He has been contacted by someone from Huth-James. He did not buy their shoes, because he wasn't interested in the shoes of that quality. He was very satisfied with what he was carrying with other companies. He has never been called on by a representative of the Leverenz Shoe Company, who make Calumet.

In connection with the foregoing six manufacturers, no one from Brown Shoe Company ever tried to prevent the witness or counsel him against buying shoes from these companies. He said, in fact, I believe that at the time we bought Deb shoes, that the fieldman had recommended we purchase those shoes as they would be a good addition to our shoe store in Eureka and in Arcata. I believe Mr. Robbe and I discussed this and he advised me to buy the shoes.

#### Cross-examination.

As to the window trim service provided through the Brown franchise program which the witness uses, he has not had the occasions to check another source for a similar service. He doesn't know of anything available that would be similar. He is satisfied with the services that they provide through the window trim service. He thinks he is getting a good bargain on it. If he did it himself, it would very likely cost him a good deal more than that. There is a certain amount of artistic skill.

The witness has made a loan from Brown Shoe Company. In 1951 he borrowed \$10,000.00. He has repaid it. The witness doesn't feel any obligation towards Brown for the benefits and services he has received through Brown franchise programs. When he gives credit to one of his customers, he doesn't expect him to come back and buy shoes from him. That customer is not obligated to the witness. The witness is obligated to him. He is glad to be deserving of his business. The reason he gives this customer credit is not in the hope he will come back again. This is the way of doing business and it is part of the witness' business.

[fol. 584] He uses a Brown line as his principal line in each of his three categories. Approximately 75 to 80 percent of his inventory is represented in Brown lines. As to whether the other brands that he carries conflict with Brown lines, he doesn't think he can fairly answer that question. Individual shoes will conflict with Brown's lines, the way he carries them. When he can find a better shoe, a better accepted shoe at a better price from another company, he will buy that shoe and not buy the similar style from the Brown Shoe Company lines.

As to the other shoes in his store, the witness carries the full line of Red Ball Jets, Weatherproofs, Cadets, Sun Steps. The manufacturer is Mishawaka Rubber Company, part of the U. S. Rubber Company lines. He carries a complete line or representative—he carries shoes from Edith Henry Company that represents this line, Santa Rosa Work shoes, he carries a complete picture there. Wolverine Shoe Company. He represents the full line of Edith Henry. Quite a few of those shoes conflict with the Brown line.

The witness does not know the theory of line concentration. As to whether he believes that he should have two lines of men's shoes which have the same style and are in the same price range, he said, not a complete picture, no. You might have one as a complete picture and others as a supplement that the first line doesn't have.

The witness was asked whether he supplemented his principal line in each of the men's, women's and children's categories which was, according to his testimony, a Brown line, with these other manufacturers' lines that he testified about. He answered, not the way you have asked the ques-

tion, no. We don't supplement children's shoes. We supplement in men's and women's but not in women's heels. By that I mean women's flats but not women's heels.

Some of the lines he carries other than Brown do supplement his Brown lines, but others are a complete line. In other words, he doesn't want to give the idea that every line he carries out of Brown supplements Brown. Some do and some are complete lines. In the case of Edith [fol. 585] Henry, Brown Shoe Company carries a comparative shoe. He happens to like the quality, the fit, the customer acceptance of Edith Henry line. As to whether he get the same shoes from Brown that would be the same as the Edith Henry Shoes, he said, some of them we do, some we don't. That is a broad picture. You can't answer a lot of your questions definitely. Yet witness would say he was concentrating on Brown lines if he has approximately 75 or 80 percent of his inventory in Brown lines.

The Brown fieldman recommended that he buy Deb shoes. The fieldman recommended that he buy a group of styles from Deb, not the complete line. The reason was to enhance the witness' business and be profitable to him, but to buy a complete line, you can't do that because they have probably 200, 300 styles. He doesn't remember exactly how many he did buy, but he would imagine he bought 5 patterns, maybe, in 12 colors. He would represent the line. He can't remember what the styles were. There have been a lot of styles since then. It is quite confusing to remember. The fieldman didn't recommend the particular styles. He recommended the witness buy a group from them. He did not say which group. In a business of this type, a man is his own buyer. A fieldman isn't his buyer. The buyer selects the styles.

As to whether the fieldman does encourage the witness to buy certain lines, he said, yes, if he thinks it would be profitable to us. The fieldman has been very helpful to us. Our welfare has been his interest. He has been fortunate to have such a fine shoe company behind him, excellent shoes. The Deb styles that the fieldman suggested or that the witness bought were styles that Brown didn't have. The Deb shoe at that time was styled by the buyer. The witness would style each shoe and designate leathers and colors and trim, finish on the shoes, so it is hard to say

that they were the same styles as Brown. They were similarly priced and of a similar quality.

Redirect examination.

As to whether the witness can recall if Brown had any shoes comparable to the Deb shoes that were as popular at [fol. 586] the time he bought the Deb shoes, he said, yes, I can recall only one, and there must have been others that went along with it.

In connection with the loan that he received from Brown, there was no tie-in with the purchase of Brown shoes or the non-purchase of outside lines. Such a thing was never discussed with the Brown people. He does not feel any hesitancy whatsoever in buying a non-Brown line of shoe, or line of shoes other than the Brown brand, as a member of the franchise program.

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CHESTER CASHION, called as a witness for the Respondent, testified as follows:

Direct examination.

His store is located in Fresno, California. It is in the Fig Garden area, and the name of the shopping area is Fig Garden Village. The population of Fresno itself is around 90,000. His store in the Fig Garden Village area is not in the city limits of Fresno. He guesses it would be in the Pillar District, a suburb of Fresno. His store in the Fig Garden Village is on the franchise program. The witness went on the program about 5 years ago. That was not coincident with the opening of the store. His first location was not under the Brown franchise. The witness franchised when he moved to that area about 5 years ago.

The name of the store is Cashion's. That is the only sign on the outside. The Brown lines of shoes carried in the store are, in the men's line, Roblee and Pedwin, children's line is Buster Brown, women's is Life Stride and Glamour Deb, a division of Buster Brown. The witness carries other lines of shoes also. In the women's line, he carries Caprini, Vocelli, Capezio, and Hollywood Scooter, Capezio,

Amano, Italian Footwear. He does not carry Naturalizer. In the children's he carries Pied Pipers and Young Capezios. The Pied Pipers are in a higher price range than Buster Brown.

[fol. 587] The witness would describe his shoe store as a family shoe store, but it is fashion wear mostly. That includes fads and high style merchandise. The shoes that he mentioned, Caprini, Vocelli, Capezio, would be classified as strictly high fashion.

The witness has carried Hush Puppies; he does not carry them now, because they don't move. That is a factor in determining what lines are carried in his store. The witness determines what lines he carries. Being on the Brown franchise program, no one from Brown has told him to carry certain lines of shoes. The fieldman calls on the witness. He usually completes the witness' monthly report, and helps the witness with his bookkeeping. The witness uses the Brown franchise record system. The fieldman does not ever make any suggestions to the witness about carrying any particular line of shoes. In other words, the line of shoes he carries is his own decision.

Mr. Cashion does not use the group life insurance under the Brown franchise program. He carries business or casualty insurance on his store operation, but not through the Brown franchise program. He carries it locally. He has used the architectural service under the Brown franchise program. The occasion was when he opened the Fig Garden store. He has never made an investigation as to what might be the comparative costs if said service were secured outside the franchise program.

As to whether he uses the window trim service under the franchise program, he said, just what they send me through the program, yes. That is not material that he pays for. It is just seasonal posters and display cards. He gets a similar type of material from some of his other sources of shoes. That would be mostly posters, sometimes seasonal colorful display material. He does not pay for that from the other sources. They send that to the witness in connection with the shoes that he carries of their line.

His store carries rubber and canvas footwear. The name of the company is U. S. Rubber Company. He buys directly [fol. 588] from U. S. Rubber salesmen. It is billed through

Brown. He does not have any reason to believe that by buying it that way, he gets any more favorable prices than he could otherwise. He has made a check as to what the price would be otherwise. The witness said he can get the same discount by buying it without going through Brown. He doesn't know whether he can buy in smaller quantities by having it billed through Brown than he otherwise could. If you buy the same quantity from U. S. Rubber, you get the same discount. He thinks there is a limit there on the quantity that you would get an extra discount on. He has no idea what that quantity would be.

Q. When you became a Brown franchise store, did you ever sign a written agreement?

A. If I did, I don't know where it is.

Q. Did you ever have any occasion to refer to it, if you did sign such an agreement?

A. No.

Q. Did anybody from Brown Shoe Company, do you recall, since you went on the program, ever bring any provision in that agreement to your attention?

A. No.

Q. What is your understanding as to when you can leave the Brown franchise program?

A. Any time I get ready.

Hearing Examiner Creel: What do you understand your obligation to Brown to be as a franchise store owner?

The Witness: As far as I am concerned, I have no obligation to them whatsoever. It is just a help to me.

The witness went on the program mainly because of the bookkeeping process. He had never done any bookkeeping himself. In operating this store, it was his first experience in that line.

. . . . .

[fol. 589] The type of community in which the witness is located has a bearing on the type of shoes he carries. [fol. 590] They are in a particular area where most of the high school kids out there are strictly high fashion conscious, and he has to go along with what they desire, and they change their desires quite often. He conforms the



type of shoes he carries to meet that type of customer demand.

He has never carried any of the shoes manufactured by Juvenile Shoe Company. No salesman has ever called on him or tried to sell him Clinics or Lazybones. His type of store would not be the type that would stock the Clinic shoe. He would never have any call for that type of footwear. The women in the area are not nurses. They would have no use for that type. This is the type of situation that the witness just referred to as sort of a customer demand, that determines the type of shoe he carries in his store.

His store has carried shoes manufactured by the Deb Shoe Corporation. Approximately 3 years ago was the last time he used any of their shoes. He dropped them because he was able to get a Capezio line, there was a conflicting style in those two lines. Being on the Brown franchise program had nothing to do with his dropping the Deb Shoe. He made the determination to drop Deb in his store, for the reason just stated. It had nothing to do with the Brown franchise program.

He has never carried Freeman shoes. A salesman from Freeman has never called. He has never carried shoes manufactured by the Weyenberg Shoe Company. Salesmen have never called. In a store like his, Freeman's or Weyenberg's would not be the types he would request to meet customer demand. He has never carried any shoes of the Huth-James Company. Salesmen of that company have never called on him. He has never carried any Leverenz Shoes. Salesmen from that company have never called on him.

#### Cross-examination.

Five years ago the witness moved to his present location and went on the Brown franchise program. Before that he was located approximately five miles from where he is at this time. He owned that store. He opened that store [fol. 591] 8 years ago, just carrying ladies' apparel, and later added shoes to it, about a year before he went out to the Village. At this time shoes were about 50 per cent of his inventory. He was carrying just juvenile shoes, mostly Buster Brown. He had a few Debs at the time, Debs and

Buster Browns and U. S. Rubber. He dropped Debs after the first year he was with them and then rebought the line again a couple of years later for just one season. He dropped them when he moved to his present location.

The witness is a high style dealer. He buys high style women's shoes for young ladies from several different manufacturers. He buys patterns. This is what is known as "hotshotting".

The witness thinks he is fairly successful in his business. In the area that he is in, he thinks that that is the best way to buy or the best way to do business, if you're going to sell fashion shoes.

He has never received a loan from Brown Shoe Company. His credit arrangement with them is a normal cash discount. He does not get additional credit from them. He was carrying the U. S. Rubber canvas wear in the store he had prior to the one he has now. The main purpose for going on the Brown franchise program was to obtain bookkeeping services that they give through this program. He finds that very beneficial. He is not a bookkeeper. Without the bookkeeping services given through that program, he would have a difficult time keeping the shoe business. He has a bookkeeper now, but did not have one at the time he went on the program. His bookkeeper keeps the Brown records and then he has an accountant to take care of the rest of the work. The bookkeeper does double duty. She cashiers and bookkeeps and sells hosiery, too. About a third of her time is on the bookkeeping system. He pays \$50.00 dollars a week. He has an accountant, too. He thinks the charge for his service runs about \$30.00 a month. The bookkeeper fills out the monthly report to Brown. The fieldman has been helping the witness because this is the first bookkeeper that he has had, that has been able to do it herself. When the fieldman used to fill out his [fol. 592] monthly report, he did not encourage the witness to carry certain lines.

As to whether the fieldman ever mentioned that the witness should drop or carry a certain line, the witness said the only time was when he first went on the program. He went into a stable type of footwear which he carries—Air Steps and basic shoes. Going into this new area, he

found it was entirely wrong, so the fieldman told him to drop it and go wild and buy high style merchandise, because that was what they would want. His sales of Air Steps prior to dropping it as a line were practically nil.

At this time the witness was shown Commission's Exhibit 25-A through C, the Brown Franchise Agreement, and asked if he had ever seen this instrument before. He might have, but he looked for it before he came up here, and he can't remember having it, and he couldn't find it in his files. The witness was asked to read Paragraph 10 of Commission's Exhibit 25-C. He was not familiar with that language.

#### Redirect examination.

The dropping of Debs was not coincident with the witness' move to his present location in Fig Garden Village. He had a disagreement with the salesman, that was the reason he dropped Debs. It did not have anything to do with going on or being on the Brown franchise program. He made the decision to drop it, then at a subsequent time, he resumed some purchases of Debs.

The witness did not replace the Air Step line with another one after he dropped it, at that particular time. He just had to play certain lines to see what the demand was going to be, and as far as replacing it with something else, there was never any definite line he replaced it with. Actually, there has never been any line in the store comparable to the Air Step line since then.

He does not consider his store in the Fig Garden Village a typical family shoe store. This is because of the high fashion merchandise that he sells.

. . . . .

[fol. 593] Recross-examination.

As to the disagreement with the Deb salesman, the witness said, I don't like his tactics. We had quite an argument over my decision of what I wanted out of his lines. That was just before coming to the present location.

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STANLEY A. TANNER, called as a witness for the respondent, testified as follows:

Direct examination.

The witness resides in Santa Rosa, California. He is in the shoe retail business there. One of his stores is located at 527 Fourth Street. The name of the store is Smith's Shoe Store. He has another shoe store in Santa Rosa at 528 Farmers Lane Shopping Center, a suburb of Santa Rosa. He has another store in Ukiah, about 60 miles north of Santa Rosa. These 3 stores are on the Brown franchise program. The approximate population of Santa Rosa is 30,000. There is a larger area for trade purposes. The population of such an area is estimated at about 125,000. There are other shoe outlets in Santa Rosa. Approximately 10 shoe stores, that are exclusive shoe stores, and probably another 10 shoe stocks in department stores, and men's and women's apparel shops.

The witness carries practically the same brands of shoes in all three stores. It would be easier for him to indicate what he carries at the 527 Fourth Street Store, that being the larger store. In the Brown lines he carries Roblee, Pedwin, Air Step, Life Stride, Buster Brown and Robin Hood. In other brands, he carries men's and women's Florsheim shoes, Clinic, a few Lazy Bones, golf shoes, Penaljo, California Cobblers, Spaulding, Wright Arch Preservers, L. B. Evans, G. H. Bass, Johanson, Mr. Gus, made by the Wilbur Shoe Manufacturing Company, Edith Henry, a shoe or two from Deb Shoe Company, Hush Puppies, and the Santa Rosa brand of boots or work shoes. It is a local manufacturer.

[fol. 594] No one from Brown Shoe Company has ever told him that he could not carry an outside or conflicting line of shoes. As to whether anyone from Brown ever asked him to stop carrying an outside line of shoe, he said they tried to sell us the shoes in that category but they never asked us to discontinue any. He is referring to the salesmen. No one from Brown Shoe Company ever told him that being a franchise dealer, he must carry a line of Brown shoes.

He carries canvas and rubber footwear in his three stores. He carries U. S. Keds and Ball Band, Mishawaka

Rubber Company. In the purchase of U. S. Rubber, those billings come through the Brown Shoe Company. This does not give him any different terms than he would otherwise get. He buys a comparable type of canvas footwear from Ball Band. The credit terms which he receives from the Ball Band source are identical to discounts that he gets from U. S. Rubber. The purchase terms referring to quantities are similar and the discounts are too. Prices of U. S. Rubber are practically identical to prices of a similar type of product he would purchase from Ball Band.

The other store in Santa Rosa is located in an area known as Montgomery Village, roughly two miles from the center of downtown Santa Rosa. It is a shopping center type of thing. The shoes he carries in that store are substantially the same as in his downtown store, however, that store carries no women's heel shoes, no women's fashion shoes, so there are some lines carried downtown but not in that store. This would include a shoe like Johanson. Air Step and Life Stride shoes are not carried in that store, except he has one or two items in low heel shoes from the Air Step line, and he believes one or two from the Life Stride line. He does not carry Smartaire in those two stores, but does in the Ukiah store. He corrected his testimony to state he has a couple of numbers from Smartaire in his Montgomery Village but not downtown.

The brands carried in his Ukiah store are not as extensive as his Santa Rosa downtown store. He carries [fol. 595] no Spaulding shoes. He has arranged to have Florsheim in August. He carries no Johanson style shoes, no Bass shoes, but does carry a work shoe section which are not in Santa Rosa, namely, Red Wing, Wienbrenner, Acme cowboy boots. That is basically it. What lines he carries in his store is determined primarily by his needs. This store has an opportunity to sell a lot of work shoes and buys several lines of work shoes. If he feels the need of a type of shoe for a price line and feels he can sell it profitably and it is available to him, he buys it.

The witness has a Florsheim sign on the 527 Fourth Street store, on the Montgomery Village store, and one in the making for Ukiah. Those signs are furnished to him. He is not certain that they are his property. He believes

they retain title to the sign. The signs are all outside, and are electrified. The sign at his Santa Rosa store is 3 or 4 by 6 or 7.

The witness in general follows a line concentration policy of merchandising. The term "line concentration" means, so far as his own operation as a shoe merchant is concerned, that in any price line and a type of footwear, he would attempt to concentrate his purchases and promotion on one brand or one line insofar as it is practical. He feels that has helped in the success of his business. It eliminates investment in overlapping sales, types and price lines. It enables him to do a better promotional job by having a broader coverage in that particular line, of concentrating advertising and promotion on it. It helps in the selling at the retail level. There is less confusion developed on the part of the salesman and customer. In other words, brand identification, and it is not confusing the customer with showing her one style in a price, style in one brand, and another style in another brand at that price. You sell around the product, you sell him on the product.

As to whether stocking conflicting lines would increase sales, in his opinion, the witness said, it probably would increase our sales, but in the retail business you would have to evaluate increases in sales with relation to increases in investments and increases in promotional costs, [fol. 596] and trying to determine which is the best net profit way to operate your business.

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[fol. 597] The witness carries Clinics in all 3 stores. No one from Brown has ever attempted to have him discontinue carrying Clinics, or criticized him in regard to carrying them. He said, if they have a product, a product that is competitive, generally speaking, if you say, "Well, I am sorry, we are not interested, we have Clinics", then that generally ends the discussion. As to Lazy Bones shoes, the witness at the present time is carrying in the downtown store their golf shoes, and in the Village store he is carrying a few items in their children's line. He has carried their children's line in the downtown store in a very minor way. He discontinued primarily because they didn't prove



to be profitable, and the reason might have been that this particular establishment has been known as a Buster Brown store where Buster Brown shoes were available through 3 ownerships, way back as far as you can remember. No one from Brown Shoe Company required him to get rid of or discontinue carrying Lazy Bones.

He carries Deb shoes in just one store, the downtown store. He has carried those for a considerable number of years. At one time he used quite a few of their shoes, probably 10 years ago. As a line he carried quite a few styles of Deb shoes then. He discontinued that practice because the shoes weren't consistently satisfactory to him and to his customers, and so the shoes wouldn't be acceptable shoes, and they at that time were one of the few who made better grade flat-heel shoes. Soon thereafter other people came in that field with what he thought was probably a better product, Edith Henry, others. His experience with the shoes other than this one shoe wasn't satisfactory. Being on the Brown Franchise Program did not have anything to do with discontinuing. It was his best decision to do so. They were replaced with other shoes than Brown.

[fol. 598] The witness never carried any Freeman shoes. The salesman from the Freeman Shoe Company never called on him. He thinks Freeman shoes are carried in Santa Rosa, at Healy Shoe Company. That is a family shoe store similar to his. He thinks the White House Department Store carries some. He has never carried any Weyenberg shoes. He doesn't recall whether a salesman has ever called on him to sell that brand of shoes. He doesn't believe so. They have also had a well established account there, the Healy Shoe Company. He has never carried any Huth-James. He doesn't believe a salesman from that company ever called on him. He is reasonably certain they are not sold any place in Santa Rosa. He has never carried any shoes from Leverenz. A salesman has never called on him from that company. He couldn't answer whether they are sold in Santa Rosa.

Mr. Tanner feels no obligation towards Brown by reason of being on the Brown franchise program. He said, our feeling is that we represent certain Brown lines which I named, as we do others, and as representatives of those brand names, we attempt to do a job in merchandising.

I can think of no reason why we would feel we had to carry those.

Q. If a particular Brown line did not sell satisfactorily, would you feel under any obligation to continue that line?

A. No, no. The fact of the matter is, we have had that experience.

Q. What did you do?

A. We carried a line they called Risque shoes, which was a Brown line, and they weren't producing, and we replaced them with Panaljos.

Q. Did anyone from Brown Shoe Company attempt to tell you that you could not do that?

A. The salesman was a little unhappy, but nobody tried to tell us we couldn't do it.

The witness did not sign a franchise agreement when he went on the program. He can leave the Brown franchise program at any time he feels it is in their best interest.

[fol. 599] Cross-examination.

As to the approximate amount of inventory represented by the Brown line, the percentage would probably be 60 per cent of Brown lines and 40 per cent of the other lines, and probably on an evaluation basis, more nearly 50-50. The approximate dollar volume overall for his three stores last year, lumping the three stores together, would be between \$400,000 and \$500,000.

The witness has a Montgomery Village store in Santa Rosa. He has a downtown store at Santa Rosa, and a Ukiah store. He went on the Brown franchise business with the Montgomery Village store when the store was opened, which he believes was in 1953 or 1954. It was opened as a brand new operation. His downtown Santa Rosa store was a going business when he bought it, 1948. It was on the Brown franchise plan when he took it over. The Ukiah store was a Brown franchise store when he bought it.

The witness then thought of two important lines in his downtown operation that he didn't mention. They use Miller shoes made by Miller Shoe Company in Cincinnati, and John A. Frye, Jet Boots, by the John A. Frye Com-

pany, which he thinks is in Massachusetts. As to whether any of these lines he just mentioned, or any of the shoes he buys from the various other manufacturers than Brown, conflict with the lines that he carries of Brown in any of his three stores, in price and quality, the witness said, in general, yes, but as to the types, not appreciably. In other words, a shoe can be competitive and in the same price line and be quite a different type of shoe, and as a result not conflict. Hush Puppies, for instance, \$10.95 shoes are the same grade as Pedwin shoes but quite a different type. Hush Puppies has a very great acceptance to the public which influences him a great deal.

The witness thinks he said they had two Florsheim signs and another one in the making. The two that are in use are outside signs; the other one will be as soon as it arrives. He has inside signs also. In addition to the Florsheim signs the witness has a Smith sign. It is his, he bought that himself. In his Montgomery Village store he has a [fol. 600] Buster Brown outside sign. It is probably 3 by 3, something like that. In other words, downtown he has a Smith Shoe Store and a Florsheim sign, in the Montgomery Village store he has a Smith Shoe Store, a Florsheim sign and a Buster Brown outside sign. In Ukiah he has a Smith Shoe Store sign and he will have a Florsheim sign on that store in a matter of a month. He has a sign on the side of the building, it being a corner building, which names many of the brands which he carries in that store, including the work shoe brand. Those are all the signs. The last one is painted on the building, something they did themselves. The Buster Brown sign was given to him by the salesman.

The witness has used the architectural services provided through the Brown franchise program on 2 stores; one time in downtown Santa Rosa and two times in Montgomery Village, when the store was first established, and the second time when it was enlarged. The witness finds the use of the architectural services very helpful.

He has not had occasion to make a loan from Brown Shoe Company. He doesn't borrow from anybody. They give him credit on the shoes. As to whether it is a credit arrangement that is different than that given to the witness' stores by other sellers of shoes, he said only to the degree that their terms might vary. Brown's credit to

him is not more favorable. He buys shoes on regular terms. Some manufacturers have considerable terms on their product, particularly if they are anxious to sell it, so he gets some of those advantages. Brown is not one of those manufacturers. Their terms are regular. The only terms he gets from Brown is if they preship ahead of scheduled date.

The witness mentioned that there are approximately 10 other stores in Santa Rosa which sell shoes exclusively. Probably more than 5, 6 are family shoe stores. Not any of those 6 are on the franchise program of Brown or any other manufacturer to his knowledge. Four of those are retail chains. The other two are independent retailers.

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[fol. 601] IRVING D. CHAPMAN, called as a witness for the Respondent, testified as follows:

Direct examination.

The witness lives at San Rafael, California, and owns 2 retail shoe stores each named Chapman's Shoe Store. There is a store located in San Rafael, and a store in Novato, California. The population of San Rafael is approximately 20,000. The population of the trade area from which he draws is in the neighborhood of 100,000. The witness would say there are around a dozen to 15 shoe stores or outlets that sell shoes in the City of San Rafael.

The population of the trade area around Novato is 18,000 to 20,000, to his best estimate. There are 5 shoe outlets in that area.

His store at San Rafael is on the Brown franchise program. It went on in 1922 or 1923. He purchased the store in 1952, and continued it on as a franchise store. The witness acquired the store in Novato in February of 1958. It is a franchise store and became one at the time he acquired it. He opened it as a new store. Actually, there had been a shoe store there, but he didn't buy their stock.

Mr. Chapman started in the shoe business when he was in high school working for a store which he later acquired in San Rafael. He worked there while going to school

for about 3 years, and perhaps a year and a half after he got out of high school. At that time he left to go to work for a department store, also in San Rafael. He worked for the department store a little over 21 years. His final position with the store was General Merchandise Manager, a position he held about 8 years. He went back into the shoe business in 1952.

He handles almost the same Brown brands of shoes in both stores. In his San Rafael store the Brown lines are Naturalizer, Life Stride, Pedwin, Roblee, Buster Brown children's shoes and Robinhood. In his Novato store he carries all of those except Naturalizers. Other brands of shoes in the San Rafael store are Spaulding, Evans, Hush [fol. 602] Puppies, and Wienbrenner. In women's shoes he carries Panaljo, Spaulding, Edith Henry flats, the Vogue Shoe Company, and lines of slippers. In his Novato store he carries Wolverine and Wienbrenner, Acme boots. He also carries Acme boots in San Rafael. He carries Panaljo and Vogue.

As to whether those other brands of shoes that he has listed conflict in his opinion with Brown brand shoes, in that they are of the same type and price range, the witness said, yes, they do. He would say that his Vogue flats would conflict with the Buster Browns, the narrow Deb flats, Panaljos—Evans and Spaulding—certainly would conflict with Roblee. In one or two isolated cases he carries the same patterns of Brown in the conflicting lines he just named. As a general rule he does not.

His fieldman presently is Art Wensel who has been calling on the witness 6 to 8 months. The fieldman in his territory before that was Lou Robbe. Lou Robbe was in his store at least 8 to 10 times a year. The services he performed at that time were primarily accounting. He helped the witness set up his seasonal opening, did his year-end audit, and advised him in bookkeeping procedures. The witness discussed the shoe business with him at those times.

Mr. Chapman's wife makes out the monthly reports on the Brown program, also the open to buy. He uses the Brown franchise program record system. He buys group life insurance through the Brown program. He has not made any comparison with what similar insurance would cost if obtained locally. He carries group business insurance. He obtains that through the Brown franchise

plan. As to whether he made any cost comparison with that, with a same or similar insurance if obtained locally, the witness said, not recently, but he has in the past. When he first purchased the store, he did make a superficial comparison at that time. His memory tells him from 20 to 25 per cent savings. This would be less than \$100 in the annual premium cost. He would say close to \$50 probably.

The witness has used the architectural services available from Brown on two occasions, in 1954, when he built the [fol. 603] new store in San Rafael, and in 1960 when he remodeled an addition to his present store. He has not obtained any estimate of what the value of those services was to him, or what the cost of similar services would have been. As to where he would have obtained those services, if not through Brown, he said, his builders, at the time he built his store, offered the services. There would not have been any charge for that. He does not obtain the window trim services available on the Brown franchise program.

The witness carries canvas and rubber footwear, both United States Rubber Company and Ball Band made by Mishawaka Rubber Company. He obtains sufficiently similar items so that he can compare prices from those two firms. He has purchased from the Mishawaka Rubber Company in the past, before he was in business himself, so he is familiar with their line. Prices for the same quantities are identical. He does not have any reason to believe that as a member of the Brown franchise program he receives any special discount or special terms from the U. S. Rubber Company that he could not get if he were not on the Brown franchise program. No one from the Brown Shoe Company ever tried to coerce him to buy from the U. S. Rubber Company. No one from Brown ever told him that he could not carry an outside or conflicting line of shoes. No one from Brown ever told him to get rid of outside or conflicting lines. No one from Brown Shoe Company told him that he must carry certain Brown lines in all the time that he has been on the Brown franchise program.

Q. Do you have a written franchise agreement, Mr. Chapman?

A. Yes, I think I do.



Q. Do you ever refer to it?

A. No.

Q. Has anyone from Brown Shoe Company ever referred you to it?

A. No.

Q. Has anyone from Brown Shoe Company pointed out any provisions to you and asked you to adhere to them?

A. No.

Q. Does the franchise agreement carry any importance to you in your opinion?

A. No.

Q. What is your understanding as to when you can leave the franchise program?

[fol. 604] A. I have no understanding at all. I assume that if I wanted to get out or decided to leave tomorrow, I could leave.

As to why he is on the Brown franchise program, he inherited it when he purchased the present store. It had been operating under that plan, and it appealed to him, so he saw no reason to change. The things that appealed mostly to him were, first, the concentration, he is a great believer in concentration of lines, and secondly, he likes the accounting facility, the monthly reports. They give him all the information that he wants. And he has a lot of confidence in the brand names themselves. He is also a great believer in nationally advertised standard brands. In fact, he goes so far as to say it is the independent retailer's only hope.

As to whether it is fundamental that he likes Brown brand shoes, as far as being on the program, he said the only answer to that is, I wouldn't still be on it if I didn't feel that way.

He practices line concentration because his personal experience throughout some thirty-odd years of retailing has proven to him beyond any question that standard brands that are recognized by people from all parts of the country. The public has confidence in most of those brands. With the rate of growth which they have, people that move in his area have never heard of Chapman's, but they have heard of Naturalizers or Buster Browns or Red Cross,

or whatever the brand might be. He does not think it would help him get additional sales if he had additional brands in the same patterns and prices of his shoes. He was going to say, not in any way proportionate to the additional investment, but he doesn't think it would materially affect his volume at all. There is a parallel to this same principle in handling department store merchandise. He doesn't think it makes too much difference what the commodity is, the principle is pretty much the same. In department stores, in departments that have specialized lines, like a men's clothing department, they made no attempt to have four, five, six lines of clothing in the same price range or type. The only exception to that, perhaps, would be in the departments where [fol. 605] there was no complexity of sizes or amount of stock that had to be carried, such as in a cosmetic department. They might have carried 15 different brands of lipstick, but that would be the only exception. In a cosmetic department which carries additional brands of the same type of merchandise that would increase your sales. The public in that particular case is educated to buy lipstick by brand alone. The investment of carrying 6 boxes of one brand, or one box of 6 brands, is not greater.

As to the result of duplicating brands in the same patterns and price category in a shoe store, the witness said, in the first place, economically it isn't sound at all. That is the major reason, because it would necessitate carrying double the inventory, and with the amount of sizes that he has to carry and the variety of styles, it wouldn't be either economically possible or physically possible to get them into one location. The other objection he sees is that it would confuse his customers. He can't on one hand say that Naturalizers are the right shoe, and then the next day say that Vitality is.

. . . . .

[fol. 606] He has never been called on by the salesman of Juvenile Shoe Company since he has been in business himself. The witness called on the salesman for Juvenile, but he hasn't called on the witness. The witness was desirous of buying the Clinic line. They were not anxious to sell the witness at all, for the reason that the line was con-

fined to another store named R. H. Macey, a department store. At the time he called the salesman did not attempt to get the witness to buy Lazy Bones shoes. There was no attempt to make him buy Lazy Bones shoes at all. The witness had bought the line, both Lazy Bones and Clinics, from the department store he was in. The store later became Macey's. They inherited Lazy Bones. He wouldn't get them. He is not interested in Lazy Bones because he [fol. 607] doesn't feel as though he has particular need of that type of shoe. There are other lines in his store that supply that particular need. In this Clinic shoe, there happens to be a space that he has, an opening for it, and it is a specialized business of theirs.

Mr. Chapman has been contacted by salesmen from the Deb Shoe Company. He purchased their shoes, when he first opened the store in 1954, for about perhaps 4 or 5 seasons, 2 years at least. No one from Brown asked him to discontinue. He did discontinue because he wasn't satisfied with the line. It had no relation to the fact that he was on the Brown franchise program. He wasn't satisfied with the line because it wasn't a profitable line. He had difficulty in selling the shoes. He had never been called on by a salesman from Freeman Shoe Company. He doesn't know whether that shoe is carried in San Rafael at the present time. He has never been called on by anyone from the Weyenberg Shoe Company. He has never been called on by anyone from the Huth-James Shoe Company. He has never heard of the Leverenz Shoe Company.

The witness feels no obligation whatsoever to Brown as a franchise dealer. The fact that he is on the Brown franchise program never has made him hesitate in buying any outside lines that he decided for other reasons to buy.

#### Cross-examination.

The witness definitely would not hesitate because he is on the Brown franchise program to buy any non-Brown brand line. He wouldn't hesitate to buy any line that he wanted to buy if he felt it was going to be profitable to him.

In San Rafael there are about a dozen shoe outlets. It is fair to say that about half a dozen are family shoe stores. There are only two of the 6 that he can think of right

now that are chains, the rest are independent. Of the 5 shoe outlets in Novato, 3 of them are family shoe stores. All 3 are independents, no chains. All three consider themselves quality retailers. The 4 family independent shoe stores in San Rafael are all quality. Only the chains are of less quality than his store.

[fol. 608] The witness used the architectural services provided through the Brown franchise program, even though he could have gotten them at no charge from his builder. He felt the services were more specialized and perhaps it would be to his advantage to have them. The building and the rest of it could have been done by the same architect. He doesn't have any recollection specifically. He knows at the time he negotiated with the builder, the architect services were part of the plan. It consisted of building, financing and architectural services.

The witness' purchases from Brown have varied from about 58 to 62 per cent of his purchases over a period of the last 4 or 5 years. He would say that he concentrates on Brown's lines. He obtained a loan from Brown once. He thinks it was \$6,000. That was about 5 years ago. At that time his business was expanding and he used the money to purchase expanding stock. He doesn't remember the rate of interest. He paid the money back on time. He doesn't remember the length of the loan. He paid it back on a monthly basis, on a series of monthly payments.

As to whether line concentration would prevent an independent retailer from having a different brand as his principal brand in each of the three categories, men's, women's and children's shoes, the witness said, if he bought the men's shoes from Company A, he didn't necessarily have to buy his women's shoes from Company A. There is nothing that would prevent that.

#### Redirect examination.

The loan the witness testified to was not tied in any way to the purchase of Brown shoes, or the non-purchase of other lines of shoes. A portion of the proceeds of the loan went to buy non-Brown shoes.

When the witness was testifying with regard to 6 family shoe stores in San Rafael, that was in the city limits itself.

The witness has a report from an organization of which

he is a director called the Marin Development Foundation. [fol. 609] They have monthly reports that list information of the type, pertaining to the number of shoe outlets in Marin County. In Marin County there are 22 shoe stores. There are approximately 58 department stores, general stores, most of which carry shoes, in addition to the 22 shoe stores.

There is an advantage in buying his primary line of women's, children's and men's shoes from one supplier. The witness said, the working with the company itself, the sales setup, the additional aids that we get through our fieldmen, coordinating those lines, where we can get information about other stores in the same type of business that we are in, and the progress that they show. We have some barometer to measure ourselves by. It simplifies record keeping.

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July 20, 1961

DON A. HANSON, called as a witness for the Respondent, testified as follows:

Direct examination.

He lives in Burley, Idaho. He is a shoe store manager for Hudson Shoe Stores, Inc., and has held that position since October, 1956. The Hudson Shoe Store in Burley opened October, 1956. That shoe store is on the Brown Franchise Program. It became a franchise store the day it opened. The witness has had 17 years' experience in shoe retailing. At this time a varied number of lines of shoes are carried in the store. For Brown brands they have Naturalizer, Life Stride and Smartaire. Those are the ladies' high fashioned lines. They have Naturalizer, Life Stride, Glamour Debs and Robinettes for women's casuals. They have Buster Brown and Robin Hood for children's shoes. In men's shoes, they have Roblee and Pedwin.

In the non-Brown brands, ladies' novelty shoes, they have Deb, Paradise Kitten and Godman. In children's shoes they have Stepmaster. And men's shoes, they buy

[fol. 610] some Briarcliffs from International Shoe Company and some Allen Edmonds which is a high grade men's line. Then they have Red Wing work shoes, and boys' boots. They have Acme, Frye and Hyer cowboy boots. They carry mostly U. S. tennis shoes and brands made by U. S. There is a Beacon Falls Brand. We also carry a few Dags which are made by General Shoe Company. They are canvas and rubber footwear. And just recently we have taken on the line Wingdings. As to professional women's white shoes we carry Joyce and one from Juvenile Shoe Corporation, "Clinic."

In connection with the Brown Franchise Program the witness makes out monthly reports, and an Open-to-Buy. He definitely uses the record system available through the Brown Franchise system. He does not obtain group life insurance from the program. He does not obtain any group business insurance through the Brown Franchise Program. He carries group business insurance locally. He has not personally had an occasion to make a cost comparison between the insurance that he carries locally and the insurance obtained through the Brown Franchise Program. He has never had occasion to use any architectural services offered by Brown in connection with his Burley store.

He has obtained a loan from Brown Shoe Company. The loan was made at the time they opened the Burley Store, and it was for \$25,000. The term of the loan was three years. The obligation was to pay it off in even monthly installments. He had a schedule of payments set up. The loan was paid off in two years and three months. He was charged five percent interest. The loan was not tied in, in any way, with the purchase of Brown brand shoes or the non-purchase of other brands. Approximately \$5,000 of the loan was used for remodeling and the balance was used to buy Brown shoes and other brands, on about a 60-40 percent basis.

The witness would say about 60 percent of his sales now are on Brown brand shoes and about 40 percent are on other shoes, if we exclude rubber goods and canvas and speak of leather shoes.

[fol. 611] No one from Brown Shoe Company ever told the witness that in order to join or remain on the Brown Franchise Program he could not carry an outside or con-



flicting line of shoes. No one from Brown ever told him that to remain on the Program he must get rid of an outside or conflicting line of shoes. No one from Brown, in connection with the Franchise Program, told him in order to join or remain in the Program he must buy certain Brown line or lines.

The witness does not have a written franchise agreement. His understanding is they may leave the Brown Franchise Program any time they choose. There is no limitation at all. They have no obligations whatsoever to Brown as a member of its Franchise Program. They are on this Program because they choose to be. The Brown Franchise Plan to them means a way of doing a more profitable business through proper record keeping and that sort of thing. If they went off the program he would certainly continue to buy Brown brand shoes.

He buys Brown brand shoes because through the 17 years of his experience in the shoe business he has had most satisfactory dealings with Brown Shoe Company. And he firmly believes that Brown shoes give his customers the best dollar for dollar value that can be spent on shoes today. In many instances he has even had salesmen from competitive firms tell him that it is real hard to beat Brown Shoe Company's prices for the quality they put out.

With regard to the record keeping system the witness uses through the Brown Franchise Program, he has never seen a program that is any more complete. If he left the program he would just duplicate it for himself and continue. He knows of no reason why he couldn't duplicate those records himself. They are very simple and easy. That is why they like them. The cost of duplicating the records would probably be very low. It would just be a matter of printing up a few sheets.

Q. Does the term "line concentration" carry any significance to you with regard to shoe retailing?

[fol. 612] A. It definitely does because through "line concentration" you definitely implant a name in your customer's mind. For instance, in Burley we have become known mostly, by our customers, for Life Strides for women and Buster Browns for children. We couldn't have done that if we had not concentrated on and bought the line as a line. And it's much more profitable to buy a line as a line,

then you don't get conflicting items. For instance, if I had one shoe from another company that was very similar to the shoe that I had from Life Stride, I would have duplicate inventories and might not have sizes in either to fit the individual customer. Whereby, if I had the same number of pairs in the one shoe, I would have plenty of sizes to fit anyone that walked into the store.

Q. Are there limitations on the number of shoes that you can carry in inventory?

A. Only on my ability to sell them.

Q. Does that, in effect, impose some limitation on how many shoes you will or want to carry in your inventory?

A. Oh, yes.

Q. Does carrying additional brands of the same patterns and in the same price range have any effect upon the sizes of shoes that you can carry in your inventory?

A. Oh, yes. Because if you buy a size range in one and a size range in another, that takes away from the pairs that you are open to buy. Consequently, you can't buy as many pairs or as many sizes in either instance.

Q. What, in your opinion, is the effect on having fewer sizes and more brands in the same patterns?

A. Well, there is definitely a loss of sales. You have more inventory; consequently, it doesn't turn as quickly. It just isn't good business.

Q. Do additional brands in the same price patterns and the same price category, in your opinion, result in increased sales?

A. Pardon me, state the question again.

Q. Do additional brands or more than one brand of shoes in the same pattern and price category result in more sales of shoes?

A. Absolutely not. It has the exact reverse effect.  
[fol. 613] Q. Why?

A. From the standpoint that I just gave. First of all, you can't carry enough sizes in either brand. For instance, a lady will come in and even though the shoes are similar, one may have a red dot on the bow and she prefers that one. You go to the shelf and you don't have her size in it but you do have it in the other brand. She is going to look around for the red dot where if you just had the one to choose from she would have been happy with that to begin with.

Q. So you sold her on style but not on size?

A. Right.

Q. And couldn't make the sale?

A. Yes It limits your sales ability.

. . . . .

[fol. 614] They carry the Clinic line of professional women's shoes made by Juvenile Shoe Corporation. The witness was shown Commission's Exhibit 138 and his attention was directed to page B thereof. The figures opposite the store known as Hudson's, Burley, Idaho are correct pairage figures for their purchases from Juvenile Shoe Corporation for the years 1957, 1958 and 1959.

Q. In connection with the purchase of Clinic shoes, the purchases were 163 pairs in 1957, 152 pairs in 1958 and 125 pairs in 1959, showing a slight decrease. Will you give the Court the reason for that decrease?

A. Well, originally we took on the line of "Clinics" because we felt it was a good name and a name that everybody knows in nurses' shoes and we took it on in good faith. But in any line of shoes, no matter how good they are, certain manufacturer defects do come up which most companies will stand behind 100%. But in every instance, during the first two years of my business with them, whenever we would send a pair back to the Juvenile Shoe Corporation we would get them back saying that "It wasn't a manufacturer defect and there was nothing we could do about it."

In fact, only once do I ever remember getting any credit from the Juvenile Shoe Corporation. Consequently, I decided then and there if I had to stand behind all of my own adjustments myself and stand the loss, it would be more profitable for me to channel that same business into [fol. 615] another line that would be more fair. I did just that. We are now selling in companion with the Clinic line.

Q. What line are you selling in companion with the Clinic line?

A. The Joyce type of nurse's oxford. Consequently, the increase in sales is shown in the Joyce line instead of in the Clinic line.

Hearing Examiner Creel: What company makes Joyce?  
The Witness: United States Shoe Corporation.

By Mr. Taylor:

Q. Has anyone from the Brown Shoe Company ever attempted to dissuade you from carrying the Clinic line of shoes?

A. No.

Q. The defects that you referred to, were they, in your opinion, manufacturer defects on the occasion that you wished to return to shoes to the Juvenile Shoe Corporation for credit?

A. Yes. We don't return them unless they are.

Q. Have you ever been asked by a Juvenile Shoe Corporation salesman to buy the Lazy Bones line of shoes?

A. Yes. When we first opened the "Clinic" line I wrote Mr. Joe Wolleck a note saying I would like to see him and he came to see me.

Q. Who is Mr. Wolleck?

A. He is the representative for the Juvenile Shoe Corporation in our area.

He came to see me and I asked him if I could have the "Clinic" line and he intimated to me that they don't open to people who don't buy their children's shoes too, which is the Lazy Bones line.

Q. How did he intimate that to you?

A. Just by clearly saying that "Normally we don't open to an account that doesn't buy both lines."

So I naturally assumed that I wasn't going to get the line and at the last moment he said, "Well, in this instance, we will let you because it's a smaller town and we would rather have just the 'Clinic' account than nothing." That was after I finally told him that I just wasn't going to buy the Lazy Bones line.

[fol. 616] Then afterwards, when he had shown me the line, I told him I just wanted to start out like I normally do with just one pattern to see how well it goes.

Q. Are you referring to the Clinic line now?

A. Yes. And after I had picked this one pattern, he said, "Well, just for that pattern, we can't open to you. You must at least buy this pattern and this pattern and in sizes." He actually told me the sizes that I had to buy.

Q. What did he mean by "and in sizes"?

A. Buy a complete size range. Because they feel if you don't have the line on a complete range of sizes, you may as well not have it.

Q. I call to your attention that this Commission's Exhibit 138B shows no purchases of Lazy Bones, Jr. or Lazy Bones, Sr. shoes from Juvenile for the years 1957, 1958 and 1959. Have you ever purchased any Lazy Bones, Jr. or Lazy Bones, Sr. from the Juvenile Shoe Corporation?

A. No, sir.

Q. Has anyone from the Brown Shoe Company ever attempted in any way to discourage you or dissuade you or direct you against buying shoes from the Juvenile Shoe Corporation?

A. No.

Q. Is your reason for not buying Lazy Bones, Jr. or Lazy Bones, Sr. in any way connected with the fact that you are on the Brown Franchise Program?

A. No.

The witness carries shoes from the Deb Shoe Company. He cannot give the exact figure for pairs of those shoes in inventory now, but in his open-to-buy for Fall he bought approximately 300 or 350 pairs of novelty shoes, and in flats or back to school type shoes, about 200 or 250 pairs. No one from Brown ever attempted to discourage him or keep him from buying shoes from the Deb Shoe Company in any way.

He has purchased maybe one or two pairs of shoes from the Freeman Shoe Company for the Burley store. He doesn't recall purchasing any great amount. He hasn't purchased more shoes from Freeman because they are carried by another company in town. This makes a considerable difference to him in deciding whether to buy a line [fol. 617] or not, and probably they wouldn't let him have it anyway. They normally allow only one account in town. The last time a Freeman shoe salesman called upon the witness and attempted to sell Freeman shoes was probably 3 or 4 years ago. The Freeman salesman sells a line of house slippers and he calls upon the witness every year for that. The witness buys the Manistee line of house slippers from him. It's a fur lined house slipper.

The witness has been called on by salesmen from the Weyenberg Shoe Company. He can't remember the last time one called. It has been a long time ago, probably 3 or 4 years. The witness did not buy any shoes from him at that time because he is pretty well established in another account in Burley, Roper's Men's Store.

He has never been called on by a sales representative from Huth-James Shoe Company to his knowledge. He doesn't remember ever being called on by a representative from the Leverenz Shoe Company.

As to who and what determines the brands of shoes that the witness carries, he said, I figure out my open-to-buy and the number of pairs that I have to buy in each category and that determines the number of pairs that I have to buy, and then I determine what to buy from those. The only thing mandatory about this open-to-buy is whether I stay in business or not. Through this open-to-buy you buy inventories that you sell instead of getting loaded to the extent that you don't sell your inventory within the period that you have to sell it in. At the end of the season if you have an inventory and no cash, you can't buy for the next season.

As to whether the Brown Shoe Company, through the use of this open-to-buy in any way restricts the witness from buying outside lines or forces him to buy Brown lines, the witness said, absolutely not. We buy what and when we choose. The Brown Shoe Company does not force him to make out an open-to-buy in connection with the franchise program. He thinks, from some of the letters he has received from Dick Johnston, that there are probably some franchise stores that do not make out this open-to-buy. This is a voluntary thing with the witness. He [fol. 618] thinks it is very helpful. Without it he doesn't suppose he would be in business very long, because it helps you to keep your inventory balanced so that you have the shoes that are selling instead of having shoes that are lying dormant on the shelves.

The witness has no hesitancy, in connection with the open-to-buy, about buying non-Brown brand shoes. There is nothing unique about the open-to-buy form that could not be duplicated by the witness. He thinks it would be very easy to duplicate. He thinks that he could get some system that would work out equally well.



### Cross-examination.

The 60 percent figure that the witness mentioned, which is the percentage of Brown shoes that he has, is probably based upon dollar sales. Within a few percent, the percentage of Brown shoes in his inventory would be the same. There are four salesmen in his store selling shoes. His approximate dollar sales last year were a little over \$110,000. He has the biggest shoe store in Burley. There is only one other family shoe store in Burley. However, there is another family outlet in a department store that carries about the same grade as they do. The other family shoe store is an independent. He doesn't know whether it is on a franchise program. Originally it was. It was an International store. He doesn't know whether it still is.

The witness has worked for a Brown Franchise store in the past. He started out in the shoe business for Hudson's. The store the witness began in was in Idaho Falls. It was a Brown Franchise store, and it was owned by the same corporation that owns the store he is now in. That corporation has four outlets. This other Brown Franchise store that the witness started working for did not have a Brown Franchise Contract. He has never seen a Brown Franchise Agreement.

The name of the corporation the witness works for is Hudson Shoe stores, Inc. They have a store in Idaho Falls, one in Burley and two in Twin Falls, Idaho.

[fol. 619] The witness testified that he still carried the Clinic brand of Juvenile shoes in his store. He is not certain what his pairage was last year, but he thinks it would probably be up slightly because they have a new hospital. He would say probably around 140 pairs. He is still dissatisfied with their service but as long as his customers call for Clinics and they don't take them away from him, he is going to keep them.

They carry around 500 pairs of Deb shoes in inventory. He could buy similar shoes from Brown. He gets those from Deb because Brown is a down-the-middle of the road type of shoe and Deb is very high fashioned. Consequently, they cover the high fashioned field with Deb. It would be the same or similar reasons why they would carry all of these other brands of shoes too, other than Brown. He doesn't believe in duplications. All these

other brands are fringe items and things that he needs that Brown doesn't supply.

The Brown Franchise fieldman does not help the witness fill out his open-to-buy. In fact, the witness doesn't see him very often, maybe once a year. He saw him this year in Seattle at the shoe show.

He does not have any neon signs in his store which are given to him by Brown. He has a Buster Brown clock but he had to buy it. As to whether he uses the window trim service provided through the Brown Franchise Program, he said, they provide show cards to everyone that buys the shoes that pertain to those show cards and we use them when and if they work in with our plans; in merchandising. As to whether he uses the window trim service that Brown provides where they come around and setup your display the witness said evidently not. I don't even know about it.

Mr. Taylor: I would like to make one correction on Mr. Timony's question. Brown does not go around and set up these displays. And there hasn't been any evidence in the record that they do.

[fol. 620] Redirect examination.

In connection with the establishment of a new hospital in his area and the slight increase that this resulted in, in the purchase of Clinic shoes by the witness, the main increase occurred in purchases of Joyce women's professional shoes. It occurred in the Joyce line because the men on the floor and he encouraged people to buy the Joyce line, because of the bad service they got from Juvenile Shoe Corporation.

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HOWARD B. MICHELS, called as a witness for the Respondent, testified as follows:

Direct examination.

The witness resides in Walla Walla, Washington. He is engaged in the shoe business. He operates a family shoe store in Walla Walla, Washington. The name of that store is Wilton's. He is a partner and manager of the

store. Wilton's store is on the Brown Franchise Program. It has been on the program ever since he has been connected with the organization, dating back to 1932.

In the Brown lines the store carries Air Step, Life Stride, Smartaires, Glamour Debs, Robinettes, Robin Hoods and Buster Browns. The men's shoes are Roblee and Pedwin. As to other brands, they carry Red Wing shoes, and they have purchased some Mark Angelo's for fall. They have, in the past, carried Troyling and Deb shoes and they are still carrying Prima Footwear. They have had Stepmasters. They carry some H. C. Godman shoes and buy some Cantilevers. That covers most of the footwear line. They have somewhere around 85 percent of their business in the Brown brand lines.

The witness has the record system under the Brown Franchise Program. He does not use the regular Brown form on open-to-buy. He makes up his own, which is a little less complicated. He has been doing that about 10 years. The use of the Brown form does not compel him to buy any particular line of shoes. As to what deter-[fol. 621] mines what line of shoes the witness chooses to buy in his store, he said, my own judgment, the appearance of the shoes, and whether I could sell them and make a profit on them. Being on the Brown Franchise Program does not in any way affect his judgment or freedom of choice.

They have never used the architectural service as a part of the Brown Franchise Program. They do use the window trim service. He thinks they pay somewhere around \$600 a year for the service. They use that service because they feel that it is something that saves them time and effort and money. They must advertise to promote the branded lines of merchandise. This is a program that is available and they don't have to waste their own time putting it together and getting it into operation.

They have never borrowed money from Brown Shoe Company. The witness subscribed to the group life insurance offered under the Program for himself. As to the business casualty group plan made available under the Brown Franchise Program, he said, we carry part of it under Brown and part of it under another company.

They carry U. S. Rubber Company products in canvas and rubber footwear. U.S. Rubber has a nice line of mer-

chandise that appeals to them and fits into their program. They have always done business with them. Being a store on the Brown Franchise Program does not in any way require them to purchase U. S. Rubber products. He knows of no difference in the price they receive from U. S. Rubber as a Brown Franchise store, and the price they would otherwise receive. He has heard of no difference from his colleagues or competitors in the shoe business at home who also carry U. S. Rubber products. He has never checked the terms they received. They have talked to him about it, and if there is any difference, he knows nothing about it.

Brown Shoe Company has never told them that they could not carry an outside or conflicting line of shoes. A conflicting line is an item that would be similar in price, quality and retail value. The styling and detailing would [fols. 622-623] be similar, whereby you would be in competition with yourself, with another brand line of shoes.

Line concentration means confining your purchases to the fewest quantities of branded lines of merchandise that you can, in order to maintain yourself in the business, and present the right styles, colors and types of merchandise to your consuming public. If you do not buy enough merchandise, you will lose sales, and if you buy too much merchandise, you will go broke. Line concentration is a type of merchandising policy that enables them to operate a business successfully. He think the records have proved that it has been a very efficient operation.

They do not have a written franchise agreement. He could terminate their relationship with the Brown Franchise Program any time he so desires. It is not necessary for them to be on the franchise program in order to buy Brown shoes. They are on the program because of the benefits which they get from it. For one thing, most of the merchandise is shipped from a central point, and the shipping cost to the West is quite high. More shipments can come through in hundred pound lots, where by buying from various manufacturers scattered throughout the country, the delivery costs would be greater. There is less chance of duplicating patterns and styles in the merchandise by concentrating on one line. That is why they concentrate on Brown brand lines.

They are on the franchise program because it is profitable to them. It fits their type of business very well. He would drop a Brown brand or line of shoe if it did not perform satisfactorily. His participation in the Brown Franchise Program would not in any way restrict him in making that decision. There were some make-up shoes made under a special make-up department of Brown Shoe Company which were not profitable for the witness because of the quantities that they had to cover, so they dropped them. That was under a separate brand.

. . . . .

[fol. 624] They do not carry a brand named Troyling now. They thought at one time that they needed a line of higher priced women's shoes, but found they were not making any money on those particular shoes and were not getting a return on their investment, so they dropped them. No one from Brown required them to drop those shoes. It was their own decision. Being on the program had nothing to do with it whatsoever.

They carried Deb shoes once, about 8 to 10 years ago. They are no longer carrying them. As to why they were discontinued, he said, we didn't feel the shoes fit as well or did as good a job of wearing and satisfying our customers for the amount of money that we had to sell them for. The witness made the decision to drop them. The fact that their store was on the Brown Franchise Program had nothing whatsoever to do with that decision. No one from Brown asked him or attempted to force him to drop that line of shoe. No one from Brown ever told him that they could not buy Deb shoes.

As to whether anyone from Brown Shoe Company ever told him that they could not buy any outside line of shoes, the witness said, we have not been restricted in our buying in any way, shape or form.

They have never bought any Juvenile shoes. The salesman has never called on them to sell them Clinics or Lazy Bones. They are carried in his community by a family shoe store.

They have never carried any Freeman shoes, manufactured by the Freeman Shoe Company. At one time a salesman from Freeman called on him. That was ap-

proximately 8 to 10 years ago. He did not buy any shoes from the salesman. The reason was that they were being carried by another store in town. That would make a difference in his decision. He said, in a town our size, if I couldn't have exclusive shoes in the one line, I would not want it. Being on the Brown Franchise Program had no influence on his decision not to buy Freeman shoes. No one from Brown told him he could not buy Freeman shoes.

They have not carried any shoes manufactured by the Weyenberg Shoe Company. To the best of his knowledge, a salesman has never called on him to sell those lines of shoes. At the present time, one line is carried in a store in his community. That just occurred in the last year. Prior to that time, they had been handled by various dealers here and there in his community.

They have never carried any shoes from the Huth-James Shoe Company. To his knowledge, a salesman from that company has never called on him. They have never carried any shoes from the Leverenz Shoe Company. A salesman from that company has never called on him.

As a Brown Franchise Dealer, the witness does not have any obligation to Brown Shoe Company.

[fol. 626] Cross-examination.

The window trim service is background material which is designed to add attractiveness to the window and invite the customer to look at it. It is generally designed so that it identifies certain branded lines of shoes which they buy from Brown. It is a form of advertising designed to promote business. There is a general picture outline to show you how the unit looks in the window so you will know how to put it in when it arrives in your store. The placing of the shoes is left up to the individual. His store gets four of these a year. They have the spring trim, the summer trim, fall trim and the Christmas trim. This does not include the services of somebody to help you set it up. They have to do their own work. They get instructions on how to install it.

The population of Walla Walla is around 25,000.



RAY J. KETTMAN, called as a witness for the Respondent, testified as follows:

Direct examination.

He lives in Auburn, Washington. His business is the retail shoe business. He has been engaged in that business 9 years. He owns Kettman's Shoe Store in Auburn. The population of Auburn is 12,000. The population of the trade area that his store in Auburn caters to, is around 30,000. He opened the store new, in 1953. It is on the Brown franchise program. It went on the program in 1957. He was using Brown brands partially before that time. Other brands in his store were Red Wing Shoes, Weather Bird, Velvet Step and Winthrop. He changed from those brands to Brown brands, before he came on the Brown franchise program. Changing those brands was not a condition of his being taken on the franchise program. The witness made the decision to change those prior brands. As to the basis for his decision, he said, I felt that for the money the selling price and the type of customers that I was catering to, that the Brown lines would do a better job for me. I felt they were better shoes.

[fol. 627] Brown did not require him to take on any Brown lines as a condition to go on their franchise program. Since he has been on the Brown franchise program, he has never been told that he could not carry conflicting or outside lines of shoes. He has never been asked to drop any outside lines or conflicting lines of shoes.

He opened a shoe store in Burien, Washington, on March 9th of this year. It is on the franchise program. It was opened as a new outlet. Brown brands of shoes carried in the store are: Air Step, Life Stride, Risque, Glamour Debs, Buster Brown, Roblee, Pedwin. Other brands of shoes carried in the store are Nunn-Bush, Red Wing, Red Ball Jets from Mishawaka Rubber Company, and Hush Puppies from Wolverine Shoe Company. For fall, he bought Chesapeake and Buckingham-Hecht from a jobber out of San Francisco. He purchased teenage skimmer flats, or flat type of shoes for growing girls and women. He does not carry any United States Rubber canvas foot-

wear. He has never been strongly urged to do so by anyone connected with the Brown Shoe Company.

His Brown fieldman in that area is Mr. Dave Arnold who calls on the witness probably 6 times a year in a business way. At those times they discuss business conditions, they go over his bookkeeping system and try to make changes for the better so that his business will improve and be on a more profitable basis. The fieldman helps the witness analyze performance of his lines. The fieldman does not tell him what lines he has to buy. The fieldman has never made any attempt to dictate to him in any way regarding his purchase of brands of shoes.

The witness makes out monthly reports on the Brown franchise program. He uses the open-to-buy. He does not have to use it. He uses it primarily as a guide. He feels it's the only basis for making a profitable buy for a season so that you won't become understocked and lose sales or overstocked and can't meet your bills. This sort of charts his course as a shoe retailer. He uses the franchise program record system and finds it very helpful. If such a record system were not available to him now, he would [fol. 628] probably take the forms that he now has and have them printed. He knows of no reason why he couldn't do this.

The witness does not obtain group life insurance through the Brown franchise program. He does not, and did not, carry fire and extended coverage or business interruption insurance through the program on the existing store, but on the new store he does. He carries business insurance on the Auburn store locally, because his local insurance man has always taken care of his insurance, not only the store but his personal insurance, too. He bought the business insurance for the new store through the Brown franchise program, because he didn't have enough time. He opened the new store on a very hurried basis. It was also less expensive. He had not made any direct cost comparison. He has had proposals from two different people and the business insurance that he obtained through Brown was approximately \$60 cheaper than what he was offered by an insurance man locally.

The witness has never received any architectural services in connection with being a Brown franchise store.

He does not use the Brown window trim service. It is available to him if he wants it. He doesn't use it because he feels that his windows are not suited for it and that he can do as good a job by buying his materials locally and making his own trim. He trims his windows 4 times a year. He has never looked into the cost of such a service locally and how it would compare with the Brown window trim service.

The witness has never been told by anyone connected with Brown that he could not carry an outside or conflicting line of shoes while on the Brown franchise program. He has never been told by anyone connected with Brown that he must get rid of any outside or conflicting line of shoes in connection with the Brown franchise program, or at all. He has never been told by anyone connected with Brown that he must carry any certain Brown line or lines.

As to what determines the lines of shoes that he carries, the witness said, the customers that I am trying to cater to. Also, the price of the shoes, the quality of the [fol. 629] shoes, the fit of the shoes, and the style of the shoes. In my opinion, what I can buy at a reasonable price and make a reasonable profit on. He feels no hesitancy or disability in buying outside lines of shoes as a member of the Brown franchise program. If he determined that he wanted and could obtain an outside line of shoes that would be good for his business, he would buy that line of shoes. No one from Brown has ever attempted to tell him otherwise.

He has a written franchise agreement in connection with his Auburn store. He does not have any for the Burien store. There has been no attempt on the part of Brown to call that contract to his attention or enforce any of its provisions since he entered into it. They have not referred to it at all. The witness has had no occasion to refer to it. His understanding is he can leave the franchise program whenever he wishes.

The term line concentration means, to the witness, concentrating on lines that are not conflicting, and keeping away from duplications at the same price level. It also means having a more profitable operation. Economists tell him that it costs \$25 just to open an account with anyone. Even if you make only one line of purchases on

a new account, it costs you \$25 to get a new source of supply. When you buy, it is very hard to remember everything that you buy. So if you concentrate your lines, you are able to keep from duplicating and becoming competitive with yourself, so to speak. He would not think carrying additional brands of the same patterns of shoes in the same price range increases your sales. It has not been his experience that it would.

As to whether there are any limitations on the amount of shoes that you can carry in your store from a business standpoint, the witness said, through your open-to-buy you can project your sales over to future months so you know approximately how many shoes that you are going to sell in each type of category. So if you have the money I suppose there is nothing to determine how many shoes you can buy. If you buy too many shoes, even if you have the money, you probably would go broke. The effect of excessive inventory on turnover is that there is no turnover. If [fol. 630] you are doing a certain volume of business and you are loaded with inventory, you have no wherewithal to go and buy more.

. . . . .

The witness has never been called on by a sales representative from the Juvenile Shoe Corporation. Juvenile brand shoes, which are Clinic and Lazy Bones, are carried in Auburn by Barline's Men's Store. It has a shoe department. It's a men's clothing store, but they carry Clinics. They have a family shoe department in the store. They sell men's, women's and children's shoes there.

[fol. 631] The witness has never been called on by a salesman from the Deb Shoe Company. He called them to obtain Deb Shoes roughly three weeks ago. He bought two flats and one heel in the square-toed shoe. Nobody from Brown Shoe Company ever attempted to discourage him from purchasing from the Deb Shoe Company.

The witness was called on by a salesman from the Freeman Shoe Company 7 or 8 years ago. He did not buy the shoes, because he couldn't use the shoes. He was already using shoes of comparable price and quality which he was satisfied with. The shoes he was using were Winthrops.

No one from Brown ever attempted to dissuade him from buying Freeman shoes at any time.

As to why the witness did not purchase Deb shoes before this season he said, I didn't need them. Being on the Brown franchise program did not prevent him or have any effect on his not buying Deb shoes prior to this time.

The witness has never purchased any shoes from the Weyenberg Shoe Company. They have never called on him. Their shoes are carried in Auburn, in Rottle's Department Store. They are carried in Burien where his new store is located by Jaffe's.

He has never been called on by a sales representative from the Huth-James Shoe Company. They are not in either of his towns that he knows of. He has never been called on by a representative of the Leverenz Shoe Company. They are not in either Burien or Auburn that he knows of.

As to whether he feels any obligation to Brown as a franchise dealer, the witness said, well, I would want to help anyone that helped me if it didn't hurt me. I feel that being on the Brown franchise program and obtaining the benefits that I do by being on the program, primarily the bookkeeping system, I would want to do as much as I could for them in reciprocal trade, so to speak. He is not required to do this by the Brown franchise program. This is just his personal feeling. He said, it's like anything else. If you did something nice for me I would want to do something nice for you if it didn't harm me and if I had the opportunity to do it. As far as I am concerned, I have [fol. 632] had nothing but fine relationships with the Brown Shoe Company.

The witness does not feel that he is bound to buy Brown brand shoes. If Brown brand shoes didn't perform for him he would change. He does not know to what, he said, but if they didn't perform I certainly couldn't use them. I am in business to make a livelihood for myself and my family and I certainly have to have shoes that I can make a profit on to do that job.

#### Cross-examination.

The witness would say around 78 to 80 per cent of his leather shoe inventory is in Brown lines. He would guess

that somewhere between 70 to 75 per cent of his entire stock is in Brown lines. That figure would be pretty close to the same if he took the percentage of his dollar sales for last year in Brown lines. He does not think the outside lines of shoes that the witness has in his store conflict with Brown lines.

The witness signed a Brown franchise agreement in his Auburn store. As to whether he remembers at that time promising to concentrate on Brown shoes and to have no conflicting lines, he said, I don't recall what the exact wording is, but if that is what it says, that is what I signed. He has concentrated on Brown shoes and has no conflicting lines in his store. As to whether one of the reasons for this is that the witness feels that he should do something for Brown Shoe Company in return for the benefits and services that they provide him through the Brown franchise program, the witness said no.

Counsel for the Commission said, I was just trying to summarize your testimony. I thought you testified that you felt a certain obligation toward Brown, the same as you would toward anyone who was giving you something. For instance, if you gave one of your customers credit and said, "You can pay me next week for the shoes instead of right now," you would feel that he would be doing the wrong thing if he went to your competitor to buy shoes. Wouldn't you say that is substantially correct? The witness would say that was partially right. He actually said [fol. 633] that if it didn't harm him he would want to do something nice.

The witness received a loan from Brown Shoe Company in April of this year. He used the proceeds to purchase shoes for the Burien store. He would say approximately 70 per cent of those were Brown brand shoes in the original buy.

#### Redirect examination.

The loan given the witness by Brown Shoe Company was not in any way tied in with the purchase of Brown brand shoes. It was not tied in any way with the absence of non-Brown brand shoes. There was no restriction placed on the loan, either prior to or at the time that he received it,



as to what the proceeds would be used for. His obligation under the loan was to make monthly payments.

The main reasons the witness buys Brown brand shoes are: they are well known brand shoes, they are priced right so that he can make a reasonable profit, and they have the right price structure and still give the type of customers that he is catering to satisfaction and the desire to return for further purchases from his store.

Q. Then what effect, if any, do these benefits that you receive from the Brown Franchise Program have on your decision to buy Brown brand shoes?

A. Really none.

Q. I am trying to get at how important they are in your decision of whether to buy Brown brand shoes or non-Brown brand shoes.

What are the things that you take into consideration in your decision of what shoes to buy?

A. The shoes that my staff and I are able to buy at a reasonable price in order to get a reasonable markup and still satisfy the bracket of customers we are trying to service.

Q. You say this is what controls your purchases of shoes?

A. This is what controls my purchases.

[fol. 634] Hearing Examiner Creel: Mr. Kettman, I believe you testified that you opened your Auburn store about 1953, was that it?

The Witness: Yes.

Hearing Examiner Creel: And at that time you were carrying some Brown lines?

The Witness: No.

Hearing Examiner Creel: Not any Brown lines?

The Witness: No.

Hearing Examiner Creel: Sometime later you took on some Brown lines?

The Witness: Yes.

Hearing Examiner Creel: Did you talk to a Brown man at that time about your becoming a franchise store or did he talk to you about it?

The Witness: No.

Hearing Examiner Creel: When was the first time that you talked to a Brown man about the general subject of your becoming a Brown franchise man?

The Witness: I think it was sometime in 1956.

Hearing Examiner Creel: Well, tell us what he told you the Brown Franchise Plan was, as best you can remember.

The Witness: I called him, as I recall.

I didn't feel that I was in a position to do the job without a bookkeeping system, primarily.

I had been a merchant's service store with International Shoe Company. And, I contacted the Brown fieldman and asked him about getting on the Brown Franchise System and to look at their bookkeeping system, basically.

As I recall, there were no obligations to become a Brown franchised store.

Hearing Examiner Creel: Well, you certainly must have understood that you would take on some Brown lines, did you not?

[fol. 635] The Witness: I already had some Brown lines.

I was switching before I ever talked to Sam Barnett. I think he was the fieldman at that time. I had already changed to Busters, Life Strides and Pedwins. I made these changes before I ever talked to the fieldman about the franchise system that they have.

Hearing Examiner Creel: He didn't go over the agreement with you?

The Witness: No, I don't believe he did.

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DAVID RIETMANN, called as a witness for the Respondent, testified as follows:

Direct examination.

He resides at Kennewick, Washington. He is engaged in the retail shoe business and owns and operates two retail shoe stores. They are located in Richland, Washington and in Kennewick, Washington. He has owned the Richland store since 1953 and the Kennewick store since 1958. Both of these stores are presently on the Brown Franchise Program. Each of the stores went on the Program from the beginning of his ownership.

The store in Richland was the opening of a new store, and he opened it on the Brown Franchise Program. He purchased the Kennewick store from another party and then changed the lines to the Brown program. That store had not been on any other type of program. They represented a number of lines but no formal program such as the witness does.

As to whose decision it was to change the lines in the Kennewick store, the witness said, it was our decision. No one from Brown Shoe Company told him that they had to make the change in the lines. As to whether he made the decision to change the lines before he put that store on the Brown Franchise Program, the witness said, we would not have bought the store unless we could have the Brown shoes. It wouldn't have had any effect on whether or not [fol. 636] we could be on the Brown Franchise Program but we did want their brands of shoes for the store.

When the witness said "unless he could have the Brown shoes", he meant if the salesmen from the Brown Shoe Company were willing to sell them. There might be a problem in that regard. If the salesmen already had accounts in the town with other dealers, their lines might not have been open to them. As to whether the witness would have been willing to buy a line that was already in a town the size of Kennewick, he said, on some of the Brown lines we wouldn't mind and on others we would. Kennewick has 16,000 people.

Prior to opening his store in Richland, in 1963, the witness had been in business in Hermiston, Oregon. He opened the store there in 1949 under the International Merchant Service program. They continued on that program until 1952 when they changed to the Brown program. It was their decision. They merely quit using International shoes and bought Brown Shoe Company's shoes. They felt that they would be carrying better shoes and could do a better retailing job. They felt they could go further in the retail business with some of the Brown lines, not only in that store but in future expansion.

The 16,000 population figure for Kennewick, Washington is within the city limits. There is a larger population in the trading area. They are in the Richland, Kennewick and Pasco trading area. Richland has 24,000 people, Ken-

newick has 16,000 and Pasco 16,000. They are opening a store in Pasco. They have purchased it and will open it within a couple of weeks. That store will be on the Brown Franchise Program. That was their decision. There was no requirement put upon them by Brown Shoe Company to put the store on the Brown Franchise Program.

In the Richland store, in Brown lines, they carry Air Step, Life Stride, Smartaire, Buster Brown, Glamour Debs, Roblee and Pedwin. Brands carried other than Brown brands are: in men's shoes, Red Wing, Bostonian and Allen Edmonds, in women's shoes, Deb, Sbiccass, Ed White, Riverside shoes from the Riverside Shoe Corporation, and Frenchies from the Nathan Shoe Company. They carry [fol. 637] an item from a number of other resources too. From the standpoint of the pairage that they sell on an annual basis, 70 to 75 percent of the pairage would be represented by Brown brand lines, in leather shoes.

The brands in the Kennewick store would be the same in most respects as those carried in the Richland store. The same percentages would apply. They also carry Child Life shoes, in Children's shoes, in both stores. The Pasco store will be identical to the Richland and Kennewick stores in regard to inventory.

As to whether he uses the record system under the Brown Franchise Program, they use most of the ideas of the Brown Franchise System. They modify the record system to suit their own particular needs or ideas but it is their guide. They have one individual that has group life insurance through the Brown Program. He does not, himself. They do subscribe to the group business and fire insurance that is made available under the Brown Franchise Program. They do not buy all of the coverage through this insurance arrangement under the Program. They buy inventory, fixture, leasehold and liability insurance. They have their other coverage with a local insurance man. The witness has not made any investigation as to whether there is any saving in cost by purchasing insurance through the Brown Franchise Program. He feels there is some saving, but he uses it primarily because it is convenient. It is not the cost as much as convenience.

They have utilized the window trim service made available under the Brown Franchise Program at a price, but they don't now. They have purchased it for the Pasco

store. In Richland they used the trim service for two years and discontinued it because it was their feeling that with work combined locally they could save themselves money. He feels that way yet today. It was their decision to do that. They used the architectural service under the Brown Franchise program in Richland in 1953, and used that service for the Pasco store this year.

They had occasion to borrow money from Brown Shoe Company in 1953, and they have a loan approved for the [fol. 638] Pasco store. In 1953, the loan was for \$30,000 on a five-year note, with interest at 5 percent. That has been paid off. There was no requirement to buy Brown Brand shoes or to refrain from purchasing shoes of other manufacturers in connection with this borrowing. They used the money to buy inventory and to improve the room and buy fixtures. There was no condition or requirement in connection with the loan that so much of the money had to be used for the purchase of Brown brand shoes. They, themselves, made the determination as to how the loan proceeds would be expended.

They borrowed at the time they purchased the Kennewick store and they have retired that. The situation in reference to the Kennewick borrowing was the same as just described in relation to the Richland store, except as to the amount of money. As to whether there were any obligations to Brown other than the payment of the loan as it matured under the terms of the loan plus interest, the witness said, the same as if I had gone down the street to the bank and borrowed the money. The same answer would apply in reference to the loan transaction in connection with the Pasco store.

They purchase canvas and rubber footwear from U. S. Rubber Company, and for fall they purchased from Mishi-waka, the Red Ball Brand. It will be a new source of canvas footwear in their store. The decision to buy Red Ball was because they have an item the witness likes and he feels that they can do a good job with it. The brand name is Ball brand or Red Ball Jets. It's all one and the same from Mishi-waka Rubber Company. They previously purchased from U. S. Rubber. The reason for buying from U. S. Rubber was that they are a top line in the witness' area. No one from Brown Shoe Company made it a condition to buy from U. S. Rubber as a franchise store.

The witness has never felt they could get better terms or more favorable credit terms by purchasing rubber goods from U. S. Rubber as a Brown Franchise store. When they bought from Mishiwaka for fall, he found out that it is exactly the same as buying from U. S. Rubber, exactly [fol. 639] the same terms. Prices for similar types of merchandise are the same. If it wasn't for the brand, you wouldn't know you were buying anything different.

The witness and his sales people determine the brand lines that they carry in their store. They analyze what their people will buy and that is what they want to buy. No one from Brown Shoe Company ever told him that as a store on the Brown Franchise Program they were required to buy any particular Brown line of shoe. No one from Brown Shoe Company ever asked him to stop or discontinue or to refrain from buying an outside or conflicting line of shoes. As a store on the Brown Franchise Program, there is no feeling on the part of the witness of a limitation on his freedom of action as an independent store operator. There isn't anything different than there would be from any other supplier. They are interested in buying the shoes that they feel they can do the best job with and that would be true of anyone they bought from.

Q. Have you ever signed a franchise agreement in connection with the Brown Franchise Program at any of your locations?

A. We did in Hermiston, Oregon, in Richland and in Kennewick.

Q. Do you have the occasion to refer to that agreement from time to time?

A. I never felt it meant anything and I always threw it away.

Q. Has anyone from Brown Shoe Company ever referred you to that agreement in connection with your store operations?

A. No.

Hearing Examiner Creel: Why do you think they asked you to sign it?

The Witness: I don't know if they themselves would really know.

It was merely stating the lines that we were going to use from Brown and that they were available to us in



town. To me, if next week the lines didn't look good to us, we would be dropping them anyway. So I don't know why they even had that piece of paper.

[fol. 640] By Mr. Burke:

Q. To you it meant nothing?

A. No.

Q. Has it in any way controlled or restricted your operation?

A. No.

Q. What is your understanding as to when you can quit or leave the Brown Franchise Program?

A. We would merely do as we felt at any time.

They have in the course of their operations as a shoe store on the Brown Franchise Program, dropped a Brown line. That occurred about three years ago. They dropped the Robin Hood line. At that time they were carrying Robin Hoods and Buster Browns and they felt they could do a better job by concentrating on one line of children's shoes and they elected to use Buster Browns. No one from Brown Shoe Company attempted to coerce or threaten him to continue carrying this line of Robin Hood shoes. It was their own decision for business reasons.

Line concentration means that their store stands for something to the public. They stand for a brand of shoes that people get to know as something that can do something for them. And to them as individuals, it does something for their store in the way of profit and satisfaction in what they sell. They feel people like to get to know a store for a certain brand, in the case of children's shoes it would be Buster Browns. You can satisfy nine out of ten people with Buster Brown shoes.

The practice of line concentration in merchandising contributes to other aspects of their business. The fewer lines and patterns they carry the more sizes they can carry, which generally provides them with the means to make a greater profit or to do a better job. In the shoe business today it's the size situation within your store that prevents you from losing sales, more so than the pattern situation. As to whether size sometimes is the best pattern that you can have, the witness said, that is certainly

true. As merchants, we are all guilty of spreading too broadly and not having size depth. For example, in our children's shoes, Buster Browns, we probably carry fewer [fols. 641-642] patterns than any Brown store that you go into but we have sizes in those patterns. As a result, we do one of the finest turnover jobs that I know of.

If they chose to carry another line of shoes in the same price, style or pattern category, that would not necessarily increase their sales. It only would if there was something within this line that wasn't available. They would and do on occasion pursue a merchandising practice of carrying another line of shoes that conflicted with or duplicated a line that they were already carrying, because they want to work with some additional shoes or something else to see what they can do with them. They are intrigued to see what they can do with something else. Generally it is a supplemental line. In the case of their children's shoes, Child Life is a principal line of orthopedic shoes. They do not carry the orthopedic type of shoe in the Buster Brown line. They carry Child Life to cover that area. They feel that they can do a better job with Child Life. No one from Brown Shoe Company has ever attempted to coerce or threaten him to carry the orthopedic type of shoe in the Buster Brown line, in preference to the Child Life Shoe. Brown would have to agree with him on the basis of their records that it was the best for them. Child Life that is.

The consumer determines what lines they carry. But in their store, the sales people and he are the only ones that can really determine that. They are closest to the people that are buying those shoes. He actually makes that determination. He thinks of their people as doing it at the store. They are a team. No one person knows what the people are going to buy. It is a team effort with the people that work for them. It's true that he as general manager has the ultimate decision, but he doesn't look at it in that way.

. . . . .

[fol. 643] The only obligation the witness feels that he had to Brown Shoe Company in regard to being a Brown Franchise Dealer was to pay for the shoes that they buy. They

have no obligation as to any particular kind or line of shoes to carry. If a line of Brown brand shoes ceased to perform satisfactorily they would drop the line. As a Brown Franchise Dealer he feels no limitation whatsoever on his freedom of action to take such a step.

They have never carried Clinics or Lazy Bones lines of shoes made by Juvenile Shoe Corporation. They have talked to salesmen about Clinic shoes, but have never endeavored to buy shoes from a Juvenile salesman. He believes it has just been a courtesy call or a stop to see their store. They have never felt they needed Clinics or Lazy Bones shoes. They feel that they have shoes that do that job real well. If they felt Clinic shoes could do as good or a better job, they would be out shopping for them and he is sure that they would have them. No one from Brown Shoe Company ever told him that they could not or should not buy any Juvenile lines of shoes. It has never been discussed.

He mentioned that they carried Deb shoes, in the other brands of shoes. They carried Deb shoes six or seven years. During that period of time the store was on the Brown Franchise Program. No one from Brown ever attempted [fol. 644] to prevent him from carrying the Deb line of shoes. He has never been subjected to threats or coercion by Brown Shoe Company to discontinue carrying the Deb lines of shoes.

They have carried Freeman shoes manufactured by the Freeman Shoe Company in Beloit, Wisconsin, from time to time. Currently, they merely special-order an item if a customer wants something that Freeman may have. They have carried four to six patterns of Freeman's men's shoes. They ceased that practice because they feel that the Roblee line does a better job in their store. The witness said, we feel we can buy Roblee shoes at a dollar a pair less than what we pay for the same thing in the Freeman line. Being on the Brown Franchise Program had nothing to do with dropping the Freeman line. No one from Brown Shoe Company told him that he had to drop the Freeman line. No one from Brown Shoe Company engaged in any threatening or coercive type of action to require him to drop the Freeman line. He said, it was our own decision. We felt that the shoes we had from Brown and other resources were doing the job. We didn't need them.

They have never carried any Weyenberg shoes. A salesman from Weyenberg Shoe Company has called on them off and on for a number of years. They have never bought any shoes from Weyenberg. They never felt the shoes would fit into their program. Being on the Brown Franchise Program had nothing to do with the decision not to buy Weyenberg shoes. Nobody from Brown Shoe Company told him that as a Brown Franchise Dealer he could not buy Weyenberg shoes. No threats were made or coercive action engaged in by any persons from Brown Shoe Company to compel him not to buy Weyenberg shoes.

They have never carried any shoes manufactured by the Huth-James Shoe Company. No salesman from that company has ever called on them to try to sell Huth-James shoes. They have never carried any shoes from the Leverenz Shoe Company. No salesman has ever called on them to sell shoes from the Leverenz Shoe Company.

[fol. 645] Cross-examination.

In children's shoes the witness' principal line is Buster Brown and in orthopedic footwear the principal line is Child Life. Buster Brown also has orthopedic shoes but they elected to use Child Life.

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VICTOR V. VANDENBURGH, called as a witness for the Respondent, testified as follows:

Direct examination.

He lives at Lake Oswego, a suburb of Portland. He is in the shoe business and operates two shoe stores. The first store is located at 6316 Southwest Capitol Highway, that is called the Hillsdale Shopping Area. It is within the incorporated city limits of Portland. The other store is located at 425 Second Street, Lake Oswego. It is a suburban community, a suburb of Portland. Both of these shoe stores go under the name Vandenburg Shoe Store. The first store in Portland opened July, 1954, just 9 years ago. The store at Lake Oswego has been in operation 4 years. The store in Portland, referred to as Hillsdale Shopping Area, was

opened as a shoe store. That store is now on the Brown Franchise Program, but was not when he opened. It went on the program about 1956 or 1957, about 2 years after he opened. The second store was started 4 years ago, in 1957. He automatically put that one right on the Brown Franchise Program when they opened it.

The brands of shoes carried in both stores are practically the same. From Brown Shoe Company they carry Buster Brown in children's shoes, Pedwins in men's shoes, Life Strides in ladies' shoes and Glamour Deb in teenage shoes. They carry about two numbers in Roblee shoes that are not important to them. In other makes they carry Weyenberg shoes, Hollywood Skooters from Vogue Shoe Company, some Freeman shoes and Buskens. They have Red Ball overshoes from Mishiwaka Rubber Company, some Kickerinos from Hampton Shoe Company in Chicago. They also have Red Wing shoes and Blue Star. From the stand-[fol. 646] point of pairage of leather shoes sold, between 65 and 75 percent of their business is represented by Brown brand lines of shoes.

In regard to their store in the Hillsdale area, the witness made no changes whatsoever in the various lines of shoes they were carrying when they went on the Brown Franchise Program. He determines the lines of shoes they carry by the shoes they think they can sell and make a profit on. Being a Brown Franchise dealer absolutely does not in any way limit his freedom of choice in that respect.

They carry Weyenberg men's shoes, by Weyenberg Olympics and the Weyenberg Massagics. They have two grades. They have carried those ever since they opened. They didn't carry the same brands of Weyenberg in the Oswego store until just this past season. They just put those in about 2 months ago. Prior to that time they carried Pedwin and Roblee lines of men's shoes in the Oswego store. They dropped the Roblee line.

No one from Brown Shoe Company has ever told him that they could not carry the Weyenberg shoe line because they are a Brown franchise store. No one from Brown has ever asked him to stop carrying the Weyenberg shoes because he is a Brown franchise store. In their Hillsdale store Weyenberg shoes represent about 75 percent of their men's shoe business. In the Oswego store they didn't have them before

so he can't say what percentage of the men's shoe business that represents. His only relationship to the Weyenberg Shoe Company is through the local people here in Portland. The local salesman calls on them.

Q. Have you ever signed a written agreement in the Brown Franchise Program?

A. Yes, when we first went on the Brown Franchise Program.

Q. Did you ever sign a franchise agreement in connection with the Oswego store?

A. I don't think so.

Q. The one that you referred to was in connection with your Hillsdale store?

A. That's right.

Q. Do you ever have the occasion to refer to that agreement?

A. I have never looked at it since we signed it.

[fol. 647] Q. Has anyone from Brown Shoe Company from the Franchise Division ever called your attention to that agreement and its terms?

A. No, sir.

Q. Are you in any way guided by the terms of that agreement, in the operation of your business?

A. No. I honestly couldn't even tell you what it was or what is says, I don't remember just exactly.

They do not carry a full line of Freeman shoes, just "spot shoes" here and there. They have been carrying the Freeman shoes in this fashion probably about 3 or 4 years. They had not carried any Freeman shoes prior to that. In other words, this was an addition to their line of merchandise. No one from Brown told him that they could not carry Freeman shoes. No one from Brown Shoe Company attempted to threaten or coerce him to discontinue carrying Freeman shoes. They are still carrying Freeman shoes. There is no reason why they couldn't carry a full line of Freeman shoes in their stores. If he thought the shoes would sell and they needed them, he would put them in, but they cover that pretty much with Weyenberg shoes. However, there are some shoes that they don't have and they buy those from Freeman Shoe Company.



The Weyenberg line and Pedwin are two different categories. Pedwins are a lower priced line and a more youthful line of shoe that they sell to high school students and so forth. We carry just two sport shoes in the Roblee line. That type of shoe does not conflict with the type of shoes they carry in Freeman or Weyenberg lines. They follow a line concentration program in their merchandising just as much as they possibly can. You can operate a shoe business better if you concentrate on certain lines. If you have fewer lines you have fewer markdowns and you have a chance to make a better profit.

Q. What is your understanding as to when you could leave the Brown Franchise Program if you chose to do so?

A. If I wanted to leave it, I would just forget it and go along on my own.

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[fol. 648] They have never carried Juvenile shoes in their store. A salesman from the Juvenile Shoe Corporation has [fol. 649] never called on them for the purpose of selling Juvenile shoes. The witness knows the brand lines Clinic and Lazy Bones of Juvenile Shoe Corporation. When he was formerly with Meier & Frank he bought them at that time, but not for his own stores. Meier & Frank is the largest department store in Portland or in the Northwest. He was a buyer there for about 16 years. He bought women's and children's shoes. That is how he is acquainted with Juvenile shoes. They have not tried to acquire Juvenile shoes for their Hillsdale or Oswego store. They don't feel they need them. They feel that they are covered very thoroughly with Buster Browns in Children's shoes. In the other Juvenile shoes, which are nurses' types, they don't have that type of trade so they have no need for those shoes. Their decision in not carrying Juvenile shoes had absolutely nothing to do with being on the Brown Franchise Program.

They have never carried shoes manufactured by the Deb Shoe Company. He is acquainted with the Deb line of shoes only through their magazine advertising and so forth. No salesman has ever called on him as an independent shoe retailer to sell him Deb shoes. When he was a buyer at Meier & Frank he never bought Debs.

As to what determines why a shoe retailer would carry one or another line of shoes, the witness said, I will cite an example. When we opened our store, I wouldn't have opened our store unless I could get nationally advertised or nationally branded lines of shoes which I thought were the best for the money that you could buy. That is one reason I picked Buster Browns and Life Strides, the shoes that we have.

They have never purchased any shoes manufactured by the Huth-James Shoe Company. He thinks once a salesman from Huth-James Shoe Company called on them to sell them shoes. They did not buy any because they didn't feel they needed them. They were on the Brown Franchise Program at that time. This definitely did not have anything to do with their decision in not buying the Huth-James shoes. They have never carried or bought any shoes from the Leverenz Shoe Company. No salesman from that company [fol. 650] has ever called on them for the purpose of selling that type of shoe. In fact, he never heard of the line.

When they first opened the shoe store in Hillsdale, Wilson High School was just opening up at that time and they were catering to the high school trade and to children, and they gradually added on. When they first opened up, they carried Buster Brown shoes or they possibly wouldn't have opened because he wanted a good brand of children's shoes. They carried Hollywood Skooters which are teenage shoes and a few Trim Foot shoes. They also carried Pedwin men's shoes and a few Weyenberg shoes. They just carried women's casuals at that time. Later they went into heels and dress shoes for women. After 1½ or 2 years they had calls for women's dress shoes so he put them in. At that time they put in Life Stride, but did not carry any other types of women's dress shoes.

They discontinued the Trim Foot line about four years ago for a personal reason. They had a salesman who was a very personal friend of the witness and as long as he was on the road the witness would buy a few shoes from him. He finally retired and the witness quit buying the shoes because he didn't think they needed them. They were on the Brown Franchise Program at that time. The fact they were on the program had nothing to do with the discontinuance of the

Trim Foot line. They dropped those and put in Blue Stars, which are similar to Trim Foot. They are children's dress shoes. They continue to carry a few Blue Stars. Their principal line of children's shoes is Buster Brown. Their principal line of women's dress shoes is Life Stride. There are a few casuals in the Life Strides and they have a few casuals in the Deb shoes. During his experience with Meier & Frank he carried Life Stride shoes. In fact, he thinks that was the only line of Brown shoes that they had in the department at that time. He thought it was the finest line of shoes that they could buy for the price, high style and the best line. And when they put dress shoes in their own store, he naturally bought Life Strides.

[fol. 651] The witness was asked whether there was any requirement made as to how many Brown brand lines of shoes they were obliged to carry when they went on the Brown Franchise Program. He said, I can't honestly answer that, because I can't tell you what was in that contract. I don't think so. He does not feel that he was under any obligation to carry any particular amount or line. If a line of Brown shoes were not performing properly, he would absolutely not have any hesitancy in dropping that line. He said, in fact, we did that this season on a certain Brown that we didn't think was up to par. We dropped it completely in the Oswego store and down about 80 percent in the Hillsdale store. That was the Glamour Deb line. He is substituting with the Hollywood Scooters. They are putting in Air Steps this fall because they feel they need a more conservative type of shoe than the Life Strides.

They borrowed money from Brown Shoe Company, when they opened their Oswego store. When they opened the first store, they had the money and paid cash for everything, but when they opened their Oswego store, they borrowed money. That loan was paid off in three years, the term of the loan. Interest was at 5 percent. There was nothing said in connection with that loan as to the purchase of Brown lines of shoes or the non-purchase of outside lines of shoes. They used the proceeds of the loan to open their store. They put the same amount in that he borrowed from Brown to open the store. Some of the proceeds were used to buy shoes or other merchandise. That was not spent entirely on Brown brand lines of shoes. There were some other lines. The

manner of spending the proceeds of the loan was just the way he wanted to spend it.

Their stores use the record system of the Brown Franchise Program, but not all of it. They don't use the buying plan. They use their own plan. He doesn't think you could operate a shoe store without a buying plan. You have to have something to base your buy on, and he thinks it would be very poor business not to use some sort of buying plan. They do not carry the group life insurance nor the business or fire or casualty insurance available under the Brown [fol. 652] program. They have never had occasion to use the architectural service. They do not subscribe to the window trim service available under the Brown program.

They have an outdoor sign at the Oswego store and the Hillsdale store. At the Oswego store it is an illuminated sign. It says Vandenburg Shoes, and underneath that sign is a Buster Brown sign. The Vandenburg Shoes sign is a leased sign, and the Buster Brown sign is separate. That sign is about three feet by four feet. He paid a dollar for it. He doesn't think they received that sign because they were on the Brown Franchise Program. They were asked if they wanted the sign, or they could have the sign if they wanted it, and naturally they took it. At the Hillsdale store they have a large sign which they lease which says Vandenburg Shoes and they have the Buster Brown sign on the side of it. The same type of sign, on the same basis. They received the signs through the Buster Brown salesman.

Their stores carry U.S. Rubber Company and Ball brand canvas or rubber footwear supplies. Ball brand is from Mishawaka Rubber Company. U. S. Rubber products are very competitive to the Ball brand rubber products. They are exactly the same as to prices and terms. In purchasing U. S. Rubber goods, they make the purchases through a U. S. Rubber salesman. They get the invoice from the U. S. Rubber Company and then they get it through Brown. They pay it to the Brown Shoe Company. The terms or discounts are just exactly the same. They used to buy straight through U. S. Rubber Company and got the same terms and the same discounts.

Meier & Frank, where the witness formerly worked as a buyer, is a large department store. As to whether that type of shoe merchandising in that type of department store

operates on a line concentration program somewhat similar to what he has described in his own store, he said, it is similar, yes. I don't think they concentrate quite as thoroughly as we do because they naturally have a much larger volume and they have to buy more outside lines. When I was there we concentrated on certain brands of major lines.

[fol. 653] He thinks that is a type of shoe merchandising that applies to a store like Meier & Frank but perhaps different in degree. He followed that when he was at Meier & Frank. They tried to concentrate on certain lines. And the purpose or reason for doing that when he was with Meier & Frank was substantially the same as in his own store operation.

#### Cross-examination.

The witness would say they have 15 to 20 percent of the total inventory of the Hillsdale store in men's shoes. Their principal brand of men's shoes is Weyenberg. They have increased the purchases of Weyenberg shoes every year since they started buying shoes from them.

#### Redirect examination.

Pedwin shoes are a type of shoe that is purchased among high school students. They are a youthful line of shoes. Their stores do a large business with high school students, principally in the Pedwin line.

(Witness excused.)

Hearing Examiner Creel: All right, we will take a recess. But before we take a recess, I want to discuss this matter of further hearings.

I indicated in Washington that I was going to reach the point pretty soon when I was going to discontinue this dealer testimony and I indicated that it would be at the end of this hearing. I think we have heard all of the dealer testimony that we should hear unless there is something different from the kind of testimony we have been listening to.

Mr. Burke: Is that a ruling that you are proposing to make?

Hearing Examiner Creel: Yes. I can make it a ruling right now if that will simplify matters.

In other words, I am not going to permit you to call any further dealer witnesses to testify in the same manner as the past dealers have testified.

Mr. Burke: We believe that if other independent shoe merchants on the Brown Franchise Program were called to testify, they would testify substantially the same as those [fol. 654] who have already testified on this same subject matter.

We do not wish to burden the Commission or the record with cumulative testimony. However, we certainly don't want to be foreclosed in providing whatever evidence that is material, competent and relevant to this inquiry. And we believe that dealer testimony is a competent, relevant and very material testimony on behalf of the Respondent in order to adequately protect its interest in view of the charges made in the complaint plus the type of testimony that was given during the case that was put on by the attorney for the Complainant.

We have attempted, in the course of this dealer testimony, to rebut directly a number of allegations or contentions that were made by the manufacturer witnesses.

And we also want to show, through the mouths of the dealers, how the Brown Franchise Program operates and what it consists of.

This Brown Franchise Program is a national program. It is coast to coast and border to border. We have engaged in hearings in Dallas and now on the West Coast to show the wide spread nature of the Brown Franchise Program and how it is practiced in various parts of the country. We certainly do not wish to be foreclosed from demonstrating further how the franchise program operates in various other parts of the country, showing that there are no differences in spite of the other definite views to the contrary that were expressed by some of the witnesses for the Complainant.

We feel that if we were prevented from bringing that type of testimony into the record by a ruling that would foreclose us from doing so, we would be materially prejudiced if a great deal of weight and credit would be given to the testimony of the manufacturer witnesses who attributed to the Brown Franchise Program certain facts that I don't believe are valid.



We recognize that at the time there was a good deal of hearsay, some of it three times removed—

[fol. 655] Hearing Examiner Creel: (Interposing) I don't think you need to argue your complete case.

Mr. Burke: I think that it is essential that we have the opportunity to demonstrate to the fullest extent possible that the Brown Franchise Program operates the way these witnesses have testified.

Would the counsel for the Complainant be willing to agree that if these witnesses were continued to be called from various sections of the country, that they would testify substantially the same as the witnesses who have testified up to now, if asked substantially the same type of questions on the same subjects?

Hearing Examiner Creel: That is up to him.

Mr. Timony: I can't so stipulate.

Hearing Examiner Creel: I am not going to insist on any kind of an agreement.

And, I may be in error in cutting you off at this point but I am convinced that I should do so and I am going to do it.

Do you have any other type of testimony that you want to offer?

Mr. Burke: May I ask, as a matter of formality on the record, if that is your ruling, sir?

Hearing Examiner Creel: Yes, it is.

Mr. Burke: Would I be presumptuous to ask you for the basis for your ruling?

Hearing Examiner Creel: I don't know whether you would be presumptuous or not but it seems to me that I have heard all of that kind of testimony that I need to hear. In fact, a lot of the testimony that we have heard has been cumulative. I certainly don't want to listen to any more of the same kind of testimony.

If you have any other kind of evidence to offer, I will be glad to hear it.

Mr. Burke: Well, in order to preserve the record on behalf of the Respondent, I will necessarily have to take exception to the ruling.

[fol. 656]

July 21, 1961

ERNEST W. LOSBERGER, called as a witness for the Respondent, testified as follows:

Direct examination.

He is in the retail shoe business and has been since April of 1948. He owns two stores: Laurel Shoes at 655 Laurel Street, San Carlos, California, and Laurel Shoes at 106 Hillsdale Mall, San Mateo, California. These are primarily juvenile shoe stores and they have expanded into a family type shoe store with the exception of women's heels. "Primarily juvenile" means mostly youngsters from about 6 months to 16 years of age. They opened the San Carlos shoe store in April, 1948, as a new store. They opened the San Mateo store as a new store in December, 1955. That is the Hillsdale unit. They had a shoe store in San Mateo prior to the present location, which had been acquired in 1951 as an existing outlet. Both of those stores were on the Brown franchise program. The San Carlos store went on the program in April, 1948. The San Mateo store went on the franchise program when it was purchased in 1951.

The lines carried in these shoe stores while they were on the Brown Franchise Program were: Buster Brown, Pedwins, Roblees, and some of the Barbara Brown, the teenage growing girls lines. They weren't named Glamour Debs at that time. No non-Brown brand shoes were carried at that time. They carried canvas and rubber footwear from the United States Rubber Company. They also carried a lot of house slippers from companies like Daniel Green Slipper Company and Welco Shoe Corporation in Waynesville, North Carolina. At one time they carried the Air Step line of women's dress shoes for approximately 2 years, probably from 1951 to 1953. They eliminated it from their stock because it proved to be unprofitable.

They continued on with the childrens' line of shoes, the Buster Brown line, and also took on another childrens' line in addition to Buster Brown, in both stores. In 1951 and 1952, they were having some problems with deliveries, so to [fol. 657] supplement their Buster line they put in a competing line of shoes to be assured of deliveries and merchan-

dise when they needed it. That was the Jumping-Jack line. It is a competing line of shoes, manufactured by Vaisey-Bristol Shoe Company. After putting in Jumping-Jacks they probably did 10 and 15 percent of their business in the Vaisey-Bristol line and approximately 25 percent in the Buster Brown line. The children's business was approximately 40 percent of the overall business in the stores. This is reasonably close figured either by pairs or by dollar sales.

They continued with the Buster Brown line until late 1953. After that they transferred to the Green Shoe Company. That is the Stride Rite line. At that time they dropped the Buster Brown and the Jumping-Jack lines of shoes. So Stride-Rite became their sole line of children's shoes. The witness would estimate the same percentage of their business was in the Stride-Rite shoes after they took them on, or around 40 percent. They entirely replaced the existing children's lines of shoes.

As to why he went to Stride-Rite, the witness said, they became available for delivery when one of our competitors was purchased by General Shoe Corporation and with the record that they had for deliveries plus the fact that they were well known in the area, we decided that this was a good idea at the time. The General Shoe Corporation purchased the chain of Sommer and Kaufmann Stores, and Stride-Rites were eliminated from these stores in favor of the Acrobat line made by General. That made Stride-Rites available in the area so the witness picked them up.

Q. At the time you ceased carrying Buster Brown shoes and picked up Stride-Rite shoes was there any attempt made by any member of the Brown franchise division to threaten or coerce you in any manner?

A. No, there were no threats made.

Q. Was there any attempt made to use the Brown Franchise Program as a means of retaining your patronage as a purchaser of Buster Brown shoes?

A. No.

[fol. 658] Q. Did you have any contact with any member of the Brown franchise division about the time you changed from Buster Brown shoes to Stride-Rite shoes?

A. Yes. I had a phone call from St. Louis from Mr. Johnston.

Q. Will you describe what he said, to the best of your recollection?

A. He called us and told us that in the future he was sure deliveries would improve and that we could get better service and could depend on deliveries when we needed them.

Q. That had been one of your problems with the Buster Brown line before?

A. That was our major problem. We didn't have the merchandise during our peak selling seasons.

Q. Did this result in your retaining the Buster Brown line?

A. No, we still proceeded with our Stride-Rite line.

Q. To the best of your recollection, did Mr. Johnston, at the time of your conversation with him, call your attention to the fact that this might result in your being taken off the Brown Franchise Program?

A. No, he didn't mention that.

Q. Did he refer to the franchise program in any way?

A. Not that I recollect, no.

Q. Did anyone subsequent to that time advise you that you had been removed from the Brown Franchise Program?

A. No.

Q. Are you still on the Brown Franchise Program?

A. No.

Q. How did it happen that you withdrew or terminated your relationship with the Brown Franchise Program?

A. We automatically assumed, when we eliminated our Busters, that we were automatically out of the Brown Franchise Program. So we just terminated the program ourselves at that time.

Prior to the time that they eliminated the Buster line in its entirety, the witness estimated that between 55 and 65 percent of their business was done on Brown brand shoes. It would be approximately the same in pairs or dollars. After they eliminated Buster Brown shoes approximately 25 percent of their business was in Brown Shoe Company lines. That is what the Buster and Jumping-Jacks combined represented at the time that they terminated them. They lost some of the percentage of Busters by adding the Vaisey-Bristol line. The percent of business they were doing with

Brown Shoe Company on Brown lines after they ceased buying Buster Brown shoes was around 25 percent.

Q. Did you have a written franchise contract with the Brown Shoe Company?

A. I can't remember whether there was a written agreement or a certificate of some type at the time that we opened or not. It seems to me there was some agreement but it wasn't a signed agreement. It was just a certificate to the fact that we were on their Brown Franchise Plan.

Q. Was any reference made to this certificate or any document in connection with the Brown Franchise Program at the time you ceased carrying Buster Brown shoes?

A. No.

Q. Did the fact that you were in the Brown Franchise Program give you any hesitation in your decision to buy Stride-Rites and cease buying Buster Brown shoes?

A. No.

United States Rubber representatives called upon the witness to sell canvas and other footwear from the United States Rubber Company while they were a franchise dealer. Those purchases were billed to Brown Shoe Company and Brown in return billed them. They continued to carry U. S. Rubber footwear after they withdrew or terminated with the Brown Franchise Program. The price of that canvas and rubber footwear did not change after they left the Brown Franchise Program. The terms of credit and discounts were the same while they were on the Brown Franchise Program and after they left. There was no change whatsoever in the price, or credit terms or special discounts or anything similar to that as a franchise dealer or after they terminated from the franchise program.

Hearing Examiner Creel: I don't understand, sir, how it was that you came off the Brown Franchise Program. Was it your decision to do it or Brown's decision or what was it? [fol. 660] The Witness: It was our decision. We arrived at this decision because we had a problem getting deliveries when we wanted this merchandise.

Hearing Examiner Creel: I understood that and I know you gave up the Buster Brown line. But it was after that, that you went off the Brown Franchise Program?

The Witness: At the same time.

Hearing Examiner Creel: Had you decided to go off or did you understand that you would be taken off when you gave up the Buster Brown line?

The Witness: We just assumed when we dropped the line in which we did the majority of our business that we were automatically off the Brown Franchise Program. That was at the time we dropped the Buster Brown line.

Hearing Examiner Creel: Well, did you resign from the program or indicate your desire to get off the program or did they tell you that you were off the program? That is what I am trying to determine.

The Witness: No, we just automatically dropped it ourselves. There was no written letter or resignation or anything. We eliminated the monthly reports from the Brown Franchise Division and we eliminated the inventory controls and everything else that usually goes with this Division.

Hearing Examiner Creel: And what lines did you continue to carry after you dropped the Buster Brown line?

The Witness: We continued to carry the Roblee lines, the Edwin lines and their teenage flat line for a short period of time.

Hearing Examiner Creel: But there is no definite date on which you could say you went off the Brown Franchise Program?

The Witness: No, sir.

[fol. 661] By Mr. Taylor:

Q. After you went off the Brown Franchise Program, was there any difference in the availability of the Brown brand lines that you continued to carry?

A. No. In fact, I think the service improved a little bit.

Q. Could you buy those Brown brand lines that you continued with at the same price and on the same credit terms as before?

A. Yes.

They had the group life insurance through the Brown Franchise Program at the store. At the time they put in the Green line of shoes, they terminated the insurance and put their insurance through their local broker. They had carried



fire and extended coverage and ability insurance through the Brown Franchise Program. They eliminated that and placed it with their local broker. They had a package deal for the entire insurance program with a local broker. The witness has made no cost comparison of the cost of that insurance to him through the Brown Franchise Program and what it was later when he obtained it locally. He had no idea what the difference would be or whether there is a difference.

They were using the record system available to Brown franchise dealers when they were on the program. Since they left the program they have maintained the same system and added additional records. They have had records which are the same or similar to the record forms they used on the Brown Franchise Program printed up locally. They had about 200 forms for inventory and month-end report sheets printed and the cost was somewhere around \$55.00 or \$60.00. Those forms would last them in a normal operation probably between 4 and 5 years for both stores. No one from Brown Shoe Company has ever asked him to refrain from using the forms that they used on the Brown Franchise Program which they are now having printed locally.

Q. While you were a member of the Brown Franchise Program, did anyone from the Brown Shoe Company ever tell you that you had to carry a certain line or lines of Brown brand shoes?

A. No.

[fol. 662] Q. While you were a member of the Brown Franchise Program, did anyone from Brown Shoe Company ever tell you should get rid of a conflicting or outside line of shoes?

A. Well, at the time that we added the Vaisey-Bristol line the salesman made a remark to that effect.

Q. Did he tie it in with the Brown Franchise Program?

A. No, he didn't tie it in with the system at all.

Q. How would you describe his efforts on behalf of Buster Brown at that time?

A. I would say it was a salesman trying to protect an account.

Hearing Examiner Creel: Will you tell us what he said, as nearly as you know?

The Witness: I can't remember the exact conversation but he did say that we should eliminate the conflicting line.

By Mr. Taylor:

Q. Did he say why you should?

A. Well, it was priced in the same area and he couldn't see the reason for two lines in the same price area.

Q. Did he place this on the basis of distribution of Buster Brown or proper merchandising of Buster Brown?

A. Yes.

Q. Did he refer in any way to the fact that you were on the Brown Franchise Program and that this was a conflicting line?

A. No.

Q. He never mentioned it?

A. No, not to my knowledge.

Q. Mr. Losberger, what have your gross sales been since you went off the Brown Franchise Program? I am not asking for detailed figures, I am asking whether they have gone up or down.

A. They have gone up substantially over the years.

Q. Will you repeat that?

A. They have gone up substantially over the years, since then.

Q. How about your net worth, has it increased or decreased?

A. It has increased proportionately.

Q. Do you know of any manner in which you were injured by leaving the Brown Franchise Program?

A. No.

[fol. 663] Q. Have you been handicapped in any manner in the operation of your business since you left the Brown Franchise Program?

A. No, we haven't.

Q. Did you have any obligation to Brown Shoe Company as a Brown Franchise dealer?

A. No, not that I can recall.

Hearing Examiner Creel: I don't understand, then, why you assumed that you would go off the Brown Franchise Program when you gave up Buster Browns. Why did you?

The Witness: Well, we had a choice. We could have

stayed on the program by buying Busters but this conflicted with the merchandising scale. In other words, the two lines were priced closely enough together that it was a double inventory.

Hearing Examiner Creel: I can see why you didn't want to do it for business reasons. But, what I was asking you was why you just assumed that you gave it up, unless you felt that you were under some obligation to continue as a member of the program. Do you see what I mean?

The Witness: Yes, I see what you mean.

Actually, there probably could be an obligation there if you carried the entire line including the Busters. But when we dropped those, we automatically assumed that we would be eliminated or would be dropped off the program itself.

Hearing Examiner Creel: All right.

**By Mr. Taylor:**

Q. While you were on the program, did you feel that you were obligated to carry Brown's lines in any extent?

A. No, and when we decided to drop the Busters, we just dropped them period.

Q. And the fact that you were on the program, did that make you hesitate in your decision to drop Busters?

A. No.

Q. You understood that you had to be a customer of Brown to be on the Brown Franchise Program?

A. Yes, that was the understanding.

[fol. 664] They have been called on by a salesman or have had contact with representatives from the Juvenile Shoe Corporation off and on. They have not purchased Clinics. They did purchase Lazy Bones in 1957 or 1958, in that area, after they were off the Brown Franchise Program. They do not carry Lazy Bones shoes today. As to why not, the witness said, we thought we needed a lower priced line in this particular type of shoe and we went into a \$5.95 to \$6.50 price line against the \$8.50 and \$8.98 Stride-Rites and we didn't need them so we eliminated them. Nothing connected with the Brown Franchise Program prevented them from buying Lazy Bones shoes if they so desired.

He didn't even recall whether they had ever been called on

by a member of the Deb Shoe Company. They have never carried the Deb line of shoes. They have never been called on by a salesman from the Freeman Shoe Company and have never carried the Freeman line. They have never been called on by a salesman from the Weyenberg Shoe Company and have never carried the Weyenberg line. They do carry men's shoes though: the Roblee line and the Pedwin line. They have never been called on by a salesman from the Huth-James Shoe Company. He is not familiar with that organization. They have never been called on by a salesman from the Leverenz Shoe Company. He is not acquainted with them either.

In his opinion the Stride-Rite line of shoes is a nationally recognized brand of shoes. As to how he would describe the line in terms of prestige or customer acceptance, the witness said, it's excellent. It is a line of very high prestige and well distributed in the country and recognized as a very good line of shoes. They rank very near the top in the industry in children's shoes.

#### Cross-examination.

The Buster Brown line in children's shoes is a highly recognized line of shoes also. It is quite close to the top. At the present time their principal children's shoe is Stride-Rite. Their principal lines of men's shoes are Roblee and Pedwin. As to their principal line of women's shoes they eliminated the women's heels when they eliminated Air-Step, [fol. 665] but do have flats and casuals which are actually a combination of teenage and women's shoes. They buy some Glamour Debs from Brown Shoe Company and they have a line called Patio that they buy from Glaser Shoe Company in San Francisco. Their principal line of women's shoes at this time is Glaser.

At the present time they are no longer on the Brown Franchise Program in either of their stores. They dropped both stores from the program at the same time. They did not use the window trim service provided through the Brown Franchise Program while they were on the program. They received a few background pictures, plaques or what have you, but there was no display service to his knowledge. The window trim service apparently did not exist when they

were on the program, or if it did, they didn't use it. They used the architectural service provided through the Brown Franchise Program twice. There was one outside sign that they had on their Twenty-Fifth Avenue store in San Mateo that was from Brown Shoe Company. The witness paid for that. They made one loan from Brown when they purchased the San Mateo operation, in 1951.

The witness found the service of the Brown field man definitely beneficial. He would not say that was the main reason they were on the Brown Franchise Program. As to the main reason, he said, I think the bookkeeping setup which was of substantial help in maintaining records and something that we were not too familiar with as to how to set up the bookkeeping system. I think this was the main reason why we went on the program. It helped us to become established and it helped us keep a better control of our inventory. Their forms and everything are set up so that they are quite easy to read and easy to maintain.

They went off the Brown Franchise Program in 1952. Since that time they have maintained approximately a 10 percent to 15 percent increase yearly, with the exception of last year.

San Carlos has approximately 24,000 people at this time. San Mateo is closer to 55,000 people.

[fol. 666] Redirect examination.

The first time they received architectural help from Brown was in 1951, when they moved their original store to the building next door. The second time was about 1953, or the early part of 1954, probably when their Hillsdale operation was set up.

The date they went off the Brown Franchise Program, as nearly as he can place it, was late 1952 or early in 1953. He can't recall the exact time but it was in that area. Counsel for respondent pointed out to the witness that he had earlier testified that they went off the program late in 1953 and now said late in 1952, and asked him to think it over and see which was the correct period of time. The witness said, in 1953. They moved to the Hillsdale Shopping Center in December, 1955, from 25th Avenue. They were

making plans and negotiating for the lease and so forth to go into that center in 1953. At that time there was some talk of putting in a Weatherby-Kaiser store. This was also instrumental in the idea to drop the Buster Brown shoes and go into the Stride-Rite line of shoes. That was in early 1953.

He believes that they left the Brown franchise program a little after that. It was 1953 because they had decided to drop this line when they heard through the Shopping Center that Brown was about to put a Weatherby-Kaiser store right across the street from them, with the same lines that they carried. They knew that the Weatherby-Kaiser store was intended to be placed there through the Superintendent of the Hillsdale Shopping Center. They saw the blueprints when they were discussing the terms of their lease and Weatherby-Kaiser's name was on one of the buildings that was located near theirs. The year he saw those blueprints as near as he can remember was early 1953. They were still on the Brown franchise program at that time.

Right now there are 15 shoe outlets in the Hillsdale Shopping Center, and upon completion of the Center, there will be 19. The architectural services they received on the second occasion in 1954, were completed after they were off the Brown franchise program. It was started when they were on the program and completed after they left.

[fol. 667] Recross-examination.

The 15 shoe outlets in the Hillsdale Shopping area do not include the witness' store in the Hillsdale Shopping Center. They do not have 3 stores. They purchased the store on 25th Avenue in San Mateo in 1950 and a huge shopping center went in about 4 blocks from this location. They had the opportunity to move to this Center and did so. That was in December of 1955.

Only one of the 15 shoe outlets in Hillsdale at the present time is a true family shoe store in itself and that is Gallenkamp. The witness' store is not a family shoe store because they don't carry the women's heels. Gallenkamp's is a retail chain store. There are 2 independent shoe outlets in the Center he believes. Their own store and the other



one is Taylor's Red Cross Shoes. They have been in there about 6 months. The rest are leased departments or chain operations.

The witness went off the Brown Franchise Program both because he thought Brown was going to put a Weatherby-Kaiser store across the street from them and because they wanted the Stride-Rite line. They didn't feel it was good business to have a Weatherby-Kaiser store carrying the exact shoes right across the mall from them, which is 50 or 60 feet, plus the fact that the Green line which is nationally recognized and an excellent line became available at that time.

#### Redirect examination.

The witness doesn't believe that the Macy Department Store is independent. He thinks Macy's run their own department.

(Witness excused.)

#### COLLOQUY

Hearing Examiner Creel: Of course, gentlemen, you understand that the remarks and ruling that I made yesterday are to be taken as following the testimony you have just heard. In other words, we anticipated that this witness was going to be here this morning.

Do you have anything further or have we discussed everything that we need to discuss except the setting of the next and last hearing?

[fols. 668-676] Mr. Burke: May I inquire in apropos of your last remarks, to what extent would testimony such as was given by the witness that we had this morning be barred by that type of ruling?

Hearing Examiner Creel: I think it would be absolutely barred by the ruling that I made yesterday.

Mr. Burke: His entire testimony?

Hearing Examiner Creel: Testimony of this type, yes.

Mr. Timony: I don't think Mr. Burke understands you, sir. Didn't you just say that this testimony was excluded from your ruling of yesterday?

Hearing Examiner Creel: That's right.

Mr. Burke: I understand that but for clarification as to the application of your ruling——

Hearing Examiner Creel: I don't think you are clarifying anything. I think you are making it more confusing. What I said yesterday was that I thought I had heard enough dealer testimony and I still think so and that would include testimony as this witness gave.

Mr. Burke: From the start to the finish?

Hearing Examiner Creel: That's right.

Mr. Burke: Well, I must necessarily take exception——

Hearing Examiner Creel: (Interposing) Let's not go through all that again. I was just explaining that because of the shortness of time this morning that we had that discussion yesterday rather than today.

. . . . .

Mr. Timony: May I ask, for the record, are you striking the testimony of this witness?

Hearing Examiner Creel: Oh, no, this isn't stricken at all. In so far as my ruling is concerned, he is considered to have testified before I ruled it.

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[fol. 677] Mr. Burke: Before calling our next witness, Mr. Examiner, I want to make a statement to you to indicate that I am not disregarding the previous ruling in Portland as to calling franchise dealers and witnesses. We have two witnesses this morning who are franchised dealers who, as their testimony will show, I believe, are in specific rebuttal to certain documentary evidence that the attorneys for the complainant introduced in evidence, and I am observing the ruling that you made. I do not want you to think I am disregarding the ruling because, while I except to it, I realize that the ruling has been made and that is that.

Hearing Examiner Creel: All right, sir.

October 30, 1961

CLARENCE W. NOLAN, called as a witness for the Respondent, testified as follows:

Direct examination.

The witness is in the shoe retail business. He owns and operates a store located at 5155 Genesee Street, Auburn, New York. It has been on the Brown franchise program under his management since 1937. The witness knows a Mr. Bob Taylor. He is a fieldman for the Brown Shoe Company. He comes to see the witness in his capacity as fieldman at the store in Auburn.

On the first trip to their store in 1958, Mr. Taylor looked their merchandise over and one particular thing seemed to [fol. 678] bother him. They had a line of shoes called Fiancee, made by Clark Shoe Company, and he thought that they could carry a line of shoes made by the Brown Shoe Company called Life Strides, and he suggested that they give that some consideration. He did not tell the witness that they had to carry the Life Stride Shoe.

The witness makes the decisions as to what shoes they carry. That determination is made on the basis of the lines, what is attractive to them, what is good for them, what sells. What is good for them is what sells. He makes that determination. They had been carrying Fiancee shoes for some period of time prior to Mr. Taylor's visit, possibly, three or four years. They are presently carrying Fiancees, and have carried them right along for this period that goes back to approximately 1955.

Mr. Taylor in the course of his conversation with the witness did not make any attempt to threaten or coerce him to compel him to carry Life Strides instead of Fiancee as a line in their store. The witness would have remembered that if he had. They had stocked Life Stride shoes prior to Mr. Taylor's visit, but no longer carried them at the time of his visit. Life Stride was a Brown line of shoes. The witness said we dropped Life Stride because we were dissatisfied with the performance. By performance I mean the attraction to the public. We didn't think we were making money on it. It was not the proper turnover and the line was not acceptable to our trade. We discontinued it.

No one from Brown Shoe Company attempted in any way to threaten or coerce him or to compel him to continue to carry Life Strides. They did nothing in reference to the suggestion of Mr. Taylor's in 1958 in regard to carrying Life Strides. The next year they looked at the Life Stride shoes in Syracuse at a style show but made no decision.

They did not stock that shoe. They continue to carry Fiancee. Mr. Taylor was not the Life Stride salesman. He was the fieldman for the Brown Shoe Company.

[fol. 679] The witness has carried shoes manufactured by the Deb Shoe Company. He is not prepared to say the date, probably around 1950 or somewhere around in there. They do not still carry them. They carried them possibly two years or less, and stopped. No one from Brown Shoe Company told him to stop carrying them. The reason was the line didn't perform. It was not attractive to their trade. It was a business decision on his part.

The witness, as the owner of a Brown franchise store, does not in any way feel restricted in his operation by virtue of being a Brown franchise store. They make their own decisions as to what shoes they carry. They have always done that and they are doing that today.

#### Cross-examination.

The witness was shown Commission's Exhibit 25 A-C, a Brown franchise contract. He said he may have seen one of those before, he doesn't recall. He doesn't remember signing one.

The store at 5155 Genesee Street is the only shoe store that they run now. They have had two other shoe stores in the past besides this one. They owned them at the same time. In 1950 they opened one in Seneca Falls, New York and sold it about last year. That was on the Brown franchise program. They have had two family shoe stores and one department store operation, Hislop Department Store, in Albany, New York. They had the department store a little more than a year, approximately 5 years ago.

They are presently under the Brown Franchise Program. The store that they own at the present time is a family shoe store.

The sale of women's shoes is a part of their operation.

Possibly 30 percent of their total annual sales is in women's shoes. They have a Brown line in women's shoes and that is Air Step. That is their leading line of women's shoes. Approximately 60 percent of their total sales volume annually is in Brown lines. This would be the same in pairs [fol. 680] or dollars. The approximate annual sales volume of the witness' store would be over \$300,000.

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ORVILLE B. SHUGARTS, called as a witness for the Respondent, testified as follows:

Direct examination.

He lives in Clearfield, Pennsylvania. He is a retail shoe merchant. They are incorporated under the name of Heydrick Shugarts, Inc., trading as Shugarts Shoes, of which he is the President of the corporation. They have two stores. The second store is located in Philipsburg, Pennsylvania, twenty miles from Clearfield. Their original store is located in Clearfield. The corporation presently operates those two stores. The witness is acquainted with the Brown franchise program. Their Clearfield store has been on the franchise program since its origination in 1935 and their Philipsburg store has been on since September of 1956.

They carry shoes manufactured by the Juvenile Shoe Corporation in both stores. That would be the professional women's white nurses' oxfords, known by the trade name as Clinic. They first began carrying Clinic shoes in the Clearfield store at the beginning of 1956 and in the Philipsburg store in September of 1956, the date which they opened the Philipsburg store. They have never stopped carrying the Clinic line in either of those stores since that time.

They carried Lazy Bones made by Juvenile in the Philipsburg store from September, 1956, for a period of approximately six months. He wouldn't know whether those were Lazy Bones Junior or Senior. He would just know them as Lazy Bones.

Q. Would you elaborate on how you happened to carry the Lazy Bones shoes?

A. Yes, when we opened the Philipsburg store the hos-

pital located in that town required the freshmen or first-year training nurses to wear black rather than the women's while normally worn by nurses, and since we had the Clinic [fol. 681] white shoes we felt the need of a black shoe that could retail at a price level which the younger nurses felt capable of paying. They don't pay them very much during the training period.

Q. What age group would that be?

A. From the time they graduate from high school. The type of black oxford that we needed was not available in the Clinic line, but it was available in the Juvenile Lazy Bones. Of course, with our opening purchase we purchased a number of those, and that was in September. Well, the following class, which began, I believe, in July of the following year, they changed the regulation in the hospital in which they allowed the freshmen to wear white, and that, of course, left with no need for the black oxfords, so we discontinued carrying those.

They have never had occasion to buy any other patterns or types of Lazy Bones shoes from the Juvenile Corporation. No one from the Juvenile Corporation ever attempted to sell them the Lazy Bones shoes as a line in either store. The fact that they do not buy Lazy Bones shoes at this time has no connection with their participation in the Brown franchise program. The fact that they are on the Brown franchise program in no way, shape or form keeps them from purchasing Lazy Bones shoes.

At the request of counsel for respondent, the witness searched his records of purchases of Clinic shoes for both stores. He has the figures with him. At this time the witness gave the following records of purchases of Clinic shoes in both stores since the date that they started using Clinic shoes. This was by pairs. In the Philipsburg store, in 1956, keeping in mind that they only opened the store in September, so the figures would be for three months, he purchased 74 pairs of Clinic and 31 pairs of the Lazy Bones shoes. In 1957 there were 122 pairs of the Clinics purchased. In 1958, 114 pairs of Clinics. In 1959, 94 pairs. These are all Clinics. In 1960, 172 pairs. He would estimate that their purchases or shipments of Clinics for the 1961 year will surpass the 1960 figure.



[fol. 682] In Clearfield in 1956 he purchased 153 pairs. These are all Clinics. In 1957, 163 pairs. In 1958, 149 pairs. In 1959, 148 pairs. In 1960, 229 pairs.

Counsel for respondent noted that during the years 1958 and 1959 his purchases of Clinics in both stores seem to decline. The witness explained they are located in a somewhat depressed area and those two years have both been economically bad years in their area, which accounts for the decline in pairage. He is certain if they had figures on other lines of shoes they carry they would find the same thing. He is positive their purchases of Clinic shoes for the year 1961 for the Clearfield store were enough to surpass the purchases of 1960. The witness feels free as a Brown franchise dealer to purchase Clinic shoes. No one connected with Brown franchise program ever attempted to impede or hinder him in any way or keep him from purchasing Clinic shoes.

The figures that he just related for both stores were taken from the original invoices received from the Juvenile Shoe Corporation during those years. They represent shipments and not purchase orders placed.

Shoes of similar type and pattern as the Clinic shoe are available from Brown Shoe Company. The brand on a somewhat modified selection is Air Step. He believes that is the only one. They carry Air Step shoes.

The witness is acquainted with George Crocker, the field representative for the franchise division. He has been in that territory since 1955 or 1956 and calls on the witness today. He has been calling on the witness periodically during that period. The witness has carried the American Girl brand of shoes in both stores. They put them in during 1956 or 1957 in both stores. In his contacts with the witness Mr. Crocker has never told him that the purchase of American Girl shoes was not in keeping with the Brown franchise program. He has never attempted to hinder or prevent the witness from carrying American Girl shoes. He has never threatened to take the witness off of the Brown franchise program for carrying the American Girl shoes. As a Brown franchise dealer the witness has no hesitancy in purchasing and continuing to carry American Girl shoes, unless the [fol. 683] patterns would be such that they didn't feel it would be profitable to carry them.

The brand that they carry is generally determined by the success of whether the shoes sell at retail in their operation. That definitely applies to Brown brands as well as to other brands. If the Brown brand did not perform successfully the witness would certainly feel free to give up that brand and go to another. As to whether the American Girl line conflicts with any Brown brand line, he believes there is a line of the Brown Shoe Company called Smart Aire, which would retail in the same price field as their lower-priced American Girl shoes. He would consider this a conflicting line.

They carried Deb shoes for two seasons, just after the Second World War, 1946 and 1947, and possibly 1948. They did not have the Philipsburg store. It was the Clearfield store. During those years they had stores in Clearfield and DuBois. They carried the Debs in the DuBois also.

Q. Why did you stop carrying Deb shoes?

A. Well, in shoe terminology, the majority of their shoes were what we term makeup shoes, in which you place your original order and there is no replacement for sizes out of stock, and their patterns were so diversified that a store like our operation could not possibly cover the entire line in a representative way without accumulating too many pairs during the season.

Q. How did the Deb shoes fit?

A. They were—I would term them ill-fitting, bad fitting.

Q. Did you take that into account in determining whether to carry them or not?

A. I did.

His decision to drop Deb shoes had nothing to do with being in the Brown franchise program. No one from Brown or the Brown franchise program told him or asked him to drop Deb shoes. They did not threaten to remove him from the Brown franchise program if he didn't drop Deb shoes.

He would guess they have a written franchise contract. He believes they do. But it would be way back in their past records, back to the original year in which they opened, 1935. He hasn't referred to the franchise contract for a good [fol. 684] many years. No one he can recall from the Brown franchise division ever referred to it in contacting him or dealing with him in the past ten years, anyway. The fran-

chise contract does not mean anything to him as a written contract.

He would feel free to leave the Brown franchise program at any time with proper mutual agreement. He means by that that their dealings with the Brown Shoe Company have always been on a friendly basis, and that would mean if he would terminate it it would be in a normal business-like manner. He does not feel that he has a business obligation to stay on the program, not at all.

#### Cross-examination.

Their Philipsburg store is on the Brown franchise program. They went on it in September of 1956. In Philipsburg there is a large hospital maintained by the State of Pennsylvania. He would guess about a 125-bed hospital. It is a nursing school in connection with the hospital. The Air Step line in their Philipsburg store does not include a nurses' line of Air Step. They do not carry any other line of nurses' shoes in what you would term strictly nurses, besides Clinic and Lazy Bones. They carry other white shoes that could be used as such, from a house that makes casual shoes, Viner Brothers. They do not carry any Brown lines which might be used as nurses' shoes.

Their corporation owns both the Clearfield and the Philipsburg stores. It is one corporation. Their approximate sales last year, combining the two stores, would range between \$175,000 and \$210,000, somewhere in there. The DuBois store was also in the corporation. They closed it in 1956. It was on the Brown franchise program. The witness would estimate that between 60 and 65 percent of their total volume of shoe sales, for both stores combined, is made up of Brown line shoes. The witness carried the Lazy Bones line in the Philipsburg store. That was just for six months. Just for that one semester or year in connection with the hospital regulations.

In connection with the Brown franchise a fieldman visits the witness periodically from Brown. On his visits he does [fol. 685] not suggest what line of shoes they should have in their store. As to whether he asks whether or not the witness should get rid of a conflicting line, the witness said, not unless it isn't showing a good profitable performance.

The witness does not disclose to him what line of shoes they are going to buy in the future.

The testimony of the witness was that he put in American Girl shoes in either 1956 or 1957. He disclosed in 1958 to the Brown fieldman that visited his stores that he was going to buy American Girl in the fall of 1958. That was not in response to a question by the fieldman, it was in connection with working on their open-to-buy budget. The fieldman did not suggest that they buy a Brown line in lieu of the American Girl line. He did not at any time subsequent to that recommend to the witness that they should buy a Brown line in lieu of the American Girl line. He recommended that they look at the Smartaire line as being a line comparable to American Girl. The American Girl line is aimed at very young female buyers and is also a budget retail priced shoe. Their leading line of shoes for that type of customer is American Girl. Less than 5 percent of their inventory is made up of sales to this type of customer. The witness did not have the Smartaire salesman visit him at his stores. He visited with the salesman at the shoe shows.

Q. Did you realize that in having the American Girl line in your store that you were not in keeping with the franchise program?

Mr. Taylor: I object to that, your Honor. There has been no testimony of that nature in the proceeding.

Mr. Timony: I am asking if he knows.

Mr. Taylor: You asked him, "Did you realize." You stated that as a fact and it is not a fact.

Hearing Examiner Creel: Overruled.

By Mr. Timony:

Q. Would you like to hear the question again?

A. I would.

[fol. 686] (The reporter read the question.)

A. No.

The witness bought Deb shoes in 1947 and 1948 and possibly 1949. He would say a fair estimate and possibly their open order, whether it was in 1946 or 1947, in their total store operation at that time would have been approximately

360-some pairs. That is for two stores for the opening year. And gradually the other two years it would be less than that, because the shoes were not successful.

#### Redirect examination.

There are areas in which the Viner line of shoes they carry conflict with Brown brand shoes. In the sports and casual field it would conflict with Robin Hood, Robinette—that is young girls—and possibly Glamor Deb. The witness never carried the Lazy Bones line, the full line, in Philipsburg. They just had this one shoe that he spoke of. One pattern. American Girl shoes were approximately less than 5 percent of their total inventory. That includes canvas and rubber. About 10 percent of their inventory is in canvas and rubber footwear. These figures are roughly the same with pairs or dollars and cents. The Juvenile salesman never calls on the witness to sell him Lazy Bones shoes. The witness has never purchased Smartaire shoes at the Brown Shoe Company.

#### Recross-examination.

The witness couldn't tell what pairage of Viner shoes they bought last year. He has the dollars and cents purchases. In 1960 at wholesale in Philipsburg, \$2,259, and in Clearfield, \$3,107.

#### Further redirect examination.

The average cost of the wholesale Viner shoes would be \$4.25.

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[fol. 687]

October 31, 1961

#### COLLOQUY

Counsel for respondent asked to have marked for identification Respondent's Exhibit No. 6, A through V. This document is entitled Stipulation of Facts. This represents a stipulation between counsel to the effect that if a Mr. Roy St. Jean, the manager of the market and sales analysis department of respondent were called as a witness he would

testify as to the subject matter contained in this particular document. There being no objection, Respondent's Exhibit No. 6, A-V was received in evidence.

Respondent's Exhibit 7, A through G was then marked for identification. Counsel for respondent said that the exhibit recites that counsel for both parties stipulate and agree that if the managers of the selling divisions of respondent were called as witnesses in this proceeding they would testify as to the subject matter therein set out. Then Counsel for respondent asked to have marked for identification as Respondent's Exhibit 8, to be considered a physical exhibit in the record, a loose leaf folder which contained a series of advertisements of International Shoe Company relating to a "Merchant's Service Division." Appended to this exhibit is an index. At this time Respondent's Exhibit 7 and Respondent's Exhibit 8 were offered into evidence.

Mr. Timony: I have no objection to Respondent's Exhibit 7 with the exception of part B of that stipulation on page 3.

Mr. Burke: I didn't realize you had an objection to that.

Mr. Timony: The preamble to the stipulation will show that I am stipulating that that is the substance of the testimony of witnesses which Brown would call.

Hearing Examiner Creel: Yes.

Mr. Timony: But I am stipulating also to the genuineness of the documents which Mr. Burke has offered as Respondent's Exhibit 8. I am not stipulating as to the relevance or materiality of Part B of Respondent's Exhibit 7 [fol. 688] on the grounds that I think it is irrelevant as to what any other manufacturers, whether they be competitors or not of Brown, give in the way of benefits and services without any contract which binds the retailer who receives those benefits and services to deal exclusively with that manufacturer or advertise in any way with that manufacturer.

Hearing Examiner Creel: As I understand it, you are stipulating as to the accuracy of the facts stated on the B section of the stipulation which has been marked Respondent's Exhibit 7, but you object to the introduction in evidence on the grounds you mention? Is that correct?

Mr. Timony: Not completely stipulating to the accuracy



either. I am saving them the trouble and necessity of calling a witness and putting him on the stand.

Hearing Examiner Creel: What you are doing is stipulating that, if called, their witness would so testify.

Mr. Timony: That is correct. And I am not objecting to Part A of that Respondent's Exhibit 7 and I will state my ground for the admission of that if you would like me to.

Hearing Examiner Creel: No, that is not necessary if you don't make any objection to it. Mr. Burke, what is your contention with respect to the manner in which the benefits and services offered by other shoe manufacturers are relevant here?

Mr. Burke: Well, I believe that inasmuch as this is a Section 5 proceeding and we are charged with some type of unfair trade practice—

Hearing Examiner Creel: Well, a Section 5 charge is the resale price maintenance. The other charge is under Section 3, isn't it?

Mr. Timony: No, your Honor, both are under Section 5.

Hearing Examiner Creel: Section 5.

[fol. 689] Mr. Burke: This is not strictly a Section 3 proceeding and I believe that what is very relevant and material to any type of trade practice that may be challenged and a complaint issued against a respondent for doing what they are alleged to be doing that it is very relevant and material for the proper consideration of the Commission in a matter such as this to have a full understanding as to what the trade practices are. I do not believe that—I recognize Mr. Timony's position—where he used some words about a contract and an obligation, the record will speak for itself in regard to that. I would object to that characterization but I do think that the benefits and services available from other manufacturers for their customers that carry their lines of shoes is extremely relevant and material to this type of proceeding to put the particular practices of Brown Shoe Company, Respondent, in proper context with the field of competition in the sale of shoes and merchandise of that character. And I believe that all those various matters that are referred to in this sub-paragraph B of Respondent's Exhibit 7 are related to and are comparable with many of the features of what has been called in the record of the Brown Franchise

Program, that not only we do but others do, that is, it is customary and practiced in this industry.

Hearing Examiner Creel: Well, I am inclined to think it is rather remote but I am going to overrule the objection and receive it in evidence. You have offered 7-A through G and 8-A through Z, haven't you?

Mr. Burke: Yes, sir.

Thereupon, Respondent's Exhibits 7 A-G and 8 A-Z were received in evidence.

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[fol. 690] HARRY W. ASTROTH, called as a witness for the Respondent, testified as follows:

Direct examination.

The witness lives in Kirkwood, Missouri, part of St. Louis County. He is employed by Brown Shoe Company as credit manager. He is also a director of the company. He has held both positions since 1951. The witness is in charge of the credit work done in connection with the Brown franchise stores. That is done under his supervision and control.

Respondent's Exhibit 9 was marked for identification and shown to the witness. He said, this is our card we use for credit reference to exchange information with other manufacturers. We share with the firm that we are inquiring of, our experiences as to the length of time we have sold the account, our high credit, manner of payments, our terms, and in turn we ask the company that we are inquiring of to give us their experience. This is known as credit exchange or trade references. The type of information obtained is basically the same as we give them. We want to know the amount that the dealer is owing them, how he is paying their bills, the terms that they sell him, their high credit, how long they have been selling them. If they do not do business with that particular dealer they mark on the card "Not selling," or if they have no recent experience, they will mark it as such, "No recent experience." In other words they say on the card whether or not the account has been sold by the manufacturer of whom the inquiry is made. Those cards are used by Brown in the normal and ordinary course of busi-

ness. These are regular "trade clearance cards," which they use for all of their credit reference work. It would be part of the witness' responsibility to supervise sending out such cards to manufacturers.

Respondent's Exhibit 10 was then marked for identification and shown to the witness. This is a summary of the results of the cards which they sent out to 6 shoe firms on dealers who had been dropped from the franchise program over the period from October 31, 1949 to April 1, 1958. [fol. 691] These cards were sent to the firms of Juvenile Shoe Company, Deb Shoe Company, Freeman Shoe Company, Weyenberg Shoe Company, Huth-James Shoe Company and Leverenz Shoe Company, and this is a summary of the returns to Brown's request for information by these various accounts. The tabulation of summary was made under his direction and control. He personally supervised that.

The witness was asked to describe the code on the front on page A of the exhibit. The code letters "DNS" were used by the respondents on the basis that they do not sell or they at least have no account that they can find on their current ledgers. The code "NE" means that they have never sold that type of account. The code "NRE" means no recent experience, which means that the account may have been active on their books at one time but they have not sold it for at least 12 months. When they mark down "1", that means that it is sold for the first time and usually they have no pay experience to give Brown for that time. And for the length of time, they use either months or years. If it means months, it means that they have sold the account for less than one year, and on the basis of years, it means that they have sold that account for two years or more. That is more or less standard practice among the credit men who exchange information.

The witness' attention was called to the fact that Respondent's Exhibit 9 for identification comes in two parts, or at least it is separate. As to the mechanics, the witness said they have a young lady who will secure from Brown's own ledgers the experience they have had with that particular dealer. She will prepare that and type the dealers name and his address on that portion of the card which is sent to the company that they want information from. His

name is not exposed because this is a double post card so that the name of the account is actually stapled underneath. Now when the company that they are inquiring of returns the information they only show the town and then they use a code number, so that through the mails there is no way to identify this customer. When the card comes back, then the girl looks at her code book and then writes the customer's [fol. 692] name so they can file it in their credit files which is their usual practice. Respondent's Exhibit 9 does not have a code number on it. The cards used by the witness in obtaining results from which he summarized in Respondent's Exhibit 10 did have the numbers on them. Respondent's Exhibit 9 was returned with a letter and did not have the customer code on it. The cards that form the basis for his summary did contain the customer's code number.

Respondent's Exhibits 9 and 10 A through E were then offered into evidence.

Voir Dire examination.

By Mr. Timony:

Q. Mr. Astroth, how did you arrive at the names of the stores on the list which were formerly Brown Franchise Stores? Had all of them left the program between October 31, 1949 and April 1, 1958?

A. Yes, sir.

Q. There are no other stores which left the Brown Franchise Program other than the ones on this list?

A. Not to my knowledge.

Mr. Taylor: The exhibit shows that those stores which had been sold or closed out of business were not circularized just for that reason and that is stated on the front page.

The Witness: In other words, we checked all of the names of the customers who have been dropped from the program during that period; with Dun and Bradstreet, which is a recognized credit rating agency and where they were no longer listed we assumed that they were no longer in business or that it has been sold and was under another name. These names here were still listed in the book.

By Mr. Timony:

Q. Couldn't that mean also that the store—I withdraw that. You didn't use Commission's Exhibit 28 in preparing this tabulation, did you?

A. I am not familiar with the exhibit, sir.

Q. But to your knowledge, you did not? Would you like to see it? (showing to witness) Commission's Exhibit 28 is a [fol. 693] list of Brown Franchise stores leaving the program between October 31, 1949 and October 31, 1955.

A. Well the period covered by the other survey was a little different period so I don't know whether this was or not. This is a different period. This covers a shorter period of time.

Q. But you personally didn't use this exhibit?

A. No.

Q. And you did prepare the Respondent's Exhibit which has been marked as what?

Mr. Taylor: Respondent's Exhibits 10-A through E for identification.

By Mr. Timony:

Q. You did prepare that?

A. That was done under my supervision.

Q. Did you use Commission's Exhibit 29 in the preparation of that Respondent's Exhibit? (Showing to witness)

Hearing Examiner Creel: Is there anything to show when these cards were received from these companies?

Mr. Taylor: The cards themselves show it.

The Witness: We have a post mark on them, sir.

Hearing Examiner Creel: Well, they are not being offered, however.

Mr. Taylor: That is right. The period involved was—

Hearing Examiner Creel: What period were they received in.

Mr. Taylor: Well, the period at the end of 1960 to right up to the present.

By Mr. Timony:

Q. Mr. Taylor tells me that the list of franchise stores from which Respondent's Exhibit 10 was prepared was

taken from Commission's Exhibits 28 and 29 and that this list can be put in evidence, is that correct?

[fol. 694] Mr. Taylor: No, simply that a list—what I am saying is that I made up a list of all of the stores that have been dropped from the program using Commission's Exhibits 28 and 29. There is some overlapping of the exhibits, every franchise store that appeared in there was put on the list given to Mr. Griffin and then given to Mr. Astroth and that was the list that was used.

Mr. Timony: Is that the list of all of the stores that you used in preparing Respondent's Exhibit No. 10?

Mr. Taylor: Yes. Any store that does not appear in Respondent's Exhibit 10 and does appear on Commission's Exhibits 28 or 29 has either been sold, closed or out of business according to Mr. Astroth's check with the Dun and Bradstreet records.

Mr. Timony: You are going to put those lists in evidence now?

Mr. Taylor: I am not sure that I have a list and I don't know why that is necessary.

Mr. Timony: I thought you just told me that you put it in.

Mr. Taylor: No. I am not even sure that I have it with me. That is the mechanism by which the tabulation was made. The cards were sent out—let me ask Mr. Astroth one thing: How were the cards sent out with regard to period of time, Mr. Astroth?

The Witness: They were started, we mailed out starting last Fall—I would say late Fall, probably November or December—up until probably two or three weeks ago we covered that period of time.

Hearing Examiner Creel: How many cards were sent out, do you know?

Mr. Taylor: Your Honor, I have the cards right here and we have no objection to putting them in evidence. We would be glad to do so.

Hearing Examiner Creel: I am not urging that they be offered, but I was trying to determine how many replies you received from how many cards sent out.

[fol. 695] Mr. Taylor: The exhibit itself will show that, your Honor, because the only replies not received will be blanks in the exhibit.



Hearing Examiner Creel: Oh, in other words, the—

Mr. Taylor: Each retailer who was circularized by this trade inquiry card, those not appearing on there were shown to have either been sold or gone out of business or closed, and therefore were not circularized, so you can determine from there that virtually everyone, credit information was received from virtually every store.

Hearing Examiner Creel: That answers my question.

Mr. Timony: Are you finished?

Mr. Taylor: Yes, I am.

By Mr. Timony:

Q. Did you personally, or did you supervise the person who did, look up the list of franchisees which Mr. Taylor gave you or Mr. Griffin gave you in Dun and Bradstreet to determine whether or not that store was presently under the same name as it was prior to having left the Brown Franchise Program?

A. That is correct. That is the first thing we did when we got the list.

Q. Did you do it yourself?

A. I did not do it myself. I had the young woman who also handles the mailing of cards to do that job before she started out on the inquiries. She checked and then she showed me the list and for those that were no longer listed in Dun and Bradstreet, we removed from the list before she sent out her inquiries. In other words, she marked it "NR", which in our work means "Not Rated".

Hearing Examiner Creel: In other words, if a company, if a shoe store had changed its status from a proprietorship to a corporation with a slight change in name, you would not have sent it?

The Witness: No, sir.

[fol. 696] By Mr. Timony:

Q. Or if it dropped the name Brownville or some other such definition from the name, you would not have it on Respondent's Exhibit 10?

A. If there was any basic change in name that we would not identify it in the Dun & Bradstreet book, we would not include it.

Q. Did you look in the Dun and Bradstreet report under names other than those given to you on the list by Mr. Griffin?

A. No.

Mr. Timony: That is all.

Direct Examination (resumed).

The witness was generally familiar with the stores whose names appear in Respondent's Exhibit 10-A through E. He has known many of those stores. As to the basis for his familiarity with them, he said, being with the company as long as he has, he more or less grew up with a lot of their dealers, and furthermore he has had the opportunity at times to analyze their figures, check their operation. This is part of his normal job. He is also familiar generally with most of those stores who were not circularized because the stores were closed or went out of business or closed its doors. As to whether he knows of any occasion of a store simply changed from partnership or corporation or made a slight change in its name, and therefore was not circularized with the trade information card, he is sure there would be cases of that kind but he wouldn't know specifics. He really doesn't think there were many.

At this time Respondent's Exhibits 9 and 10A-E were received in evidence without objection.

Hearing Examiner Creel: The reason I ask that question about the change in the status of the stores, it seems to me that a number of the witnesses had testified that they had changed the status and perhaps their name, a slight change.

The Witness: If it was a change in ownership, either from a partnership or sole proprietorship to a corporation, as far [fol. 697] as credit information is concerned, you have to start fresh because you are dealing with a new entity there. You are not dealing with the same thing.

The witness is familiar with credit managers and credit men and other shoe manufacturers around the country. They are a very congenial and close knit group. They have monthly and annual meetings. It has developed in the last 10 years where the credit men are coming to get to know each other much better than they used to. He is a member of the National Association of Credit Management, through

the St. Louis branch. The witness has formed an opinion as to the help, from the credit or financial standpoint, that is available to the average retail shoe dealer shoe customer from shoe manufacturers around the country. He said, I think one of the great developments in the field of credit management in the last 10 years has been the ability of many credit men now to discuss retail problems, not only from a standpoint of finances, but from the standpoint of merchandising practices which basically is still finances. It is merely the management of money when you get right down to it. Merchandising is merely management of money to come up with a good profit and I would say by and large that credit men today are very familiar with retail operation, what has to be done to show a profit. That is even true of banking people in the banks today. They are far more familiar with retailing and merchandising than they were years ago. As to whether they offer this type of counseling service to retailers the witness said if they are doing their job well they should. To the best of the witness' knowledge in talking to these men in various meetings, other shoe manufacturers, they counsel with their accounts just as Brown does. As to the type of information shoe manufacturers need in order to give the types of advice that he is speaking of, basically the customer-dealer should submit a balance sheet and a profit and loss statement so that you have complete figures that you can make an analysis of his operation. And that too has been a very wonderful development over the years. The dealers today are more willing to supply their creditors with information in detail, such as profit and loss [fol. 698] statements. In fact that has only been within the last 5 or 10 years that dealers now willingly submit their profit and loss figure. They used to merely give you a balance sheet.

It is the witness' testimony that, given that kind of figures, the credit men and shoe manufacturers around the country with whom he is familiar give advice as to the inventories and turn over and mark up. He knows of many credit men with other shoe firms that give that type of help, that type of service. That type of service is not restricted to being available only in large firms such as Brown, International or General. He is familiar with credit men of smaller firms who are qualified and do this type of work. Travel and go out and

visit accounts, and analyze their figures with them and help them. These credit men, many of them, are qualified to set up merchandising programs.

As to the type of help that is available in that regard through banks, the witness can only answer that from the standpoint of the type of information Brown now gets from a bank when they write them as to a particular dealer they are investigating. It is only in recent years that the banks will write you in great detail and give you their opinion of the progress of that particular account. And in the past they would write very brief letters and merely the fact that you were using a customer of this bank who maintained a checking account with an average balance of so and so. But now they actually go in and give you detailed information which of course is all treated in confidence. As to whether he thinks they are in a position upon receipt of proper information from a shoe dealer, to counsel him with regard to inventory turn over, mark up, and expense, the witness said by and large your bankers today are qualified to do that job and they are doing it and doing it well.

When a store goes off the Brown franchise program there is no change whatsoever made in the credit terms or discounts made available to that store. There is no difference between the credit terms and discounts of prices charged [fol. 699] franchise stores or general accounts of Brown. The witness said, our prices and our terms are the same to everyone regardless of their size.

#### Cross-examination.

The credit arrangements and terms that Brown gives to Brown franchises and to other purchasers from Brown are the same regardless of the size. He thinks that is basically true throughout the industry. He wouldn't be familiar with the practices of other firms but he thinks as a whole they treat all accounts on the same basis regardless of their size. The witness does talk to other credit managers and he has a friendly relationship with a great number of them, so he would be familiar with that information. He is knowledgeable in the retail sales, for instance, of the Brown franchisee. That would be a part of their profit and loss state-

ment which he sees. The witness doesn't know the average volume of sales of Brown franchisees for 1960, because it is not his area of responsibility to determine these sales figures. If he gave a figure it would be by hearsay only, not one that he actually has prepared. He believes that in a conversation with Mr. Johnston some time ago he mentioned that the average retail sales of these stores were somewhere in the neighborhood of \$90,000 but the witness is not positive of that.

The witness scans the balance sheets for the purposes of determining the credit responsibility of these franchisees, as well as other accounts that are not on the program.

That conversation with Mr. Johnston was last week in Chicago. They were discussing the growth of this program and the performance of the dealers, and he believes that at that time Mr. Johnston mentioned that there was an average volume of about \$90,000.

#### Redirect examination.

In his conversation with credit men connected with other shoe manufacturers, they have never told the witness they were offering varying credit terms to their larger accounts, [fol. 700] or have discussed the matter at all, as to specific accounts. The association will at times make a survey of, not only the shoe industry but all industry, as to their terms and credit practices and that is then published to all of the members. In other words, what is the usual terms in the shoe industry and so forth. But as to specific companies they do not get that information. Such a survey would probably not show variances to individual customers if they were given.

In counseling with Brown franchise stores, or any shoe retailers, with regard to the adequacy of their turn over and mark up and whether their costs are too high or too low, the balance sheet and the profit and loss statement are adequate records if you are dealing in merely dollars and cents. Now if you want to go into merchandising by pairs, then you have to get pairage information. The witness would say that the bulk of accounts who are now operating such a franchise store, you would really get the information in dollars and

cents. Before he could give the type of information, of advise, he was discussing before, it would involve more detailed records. Where those records are given to credit men in the shoe industry, then such advice is available from them. He can definitely say that of Brown, whether the dealer is a franchise or not, he can still secure that type of service, that type of counseling from his regular credit man. They are qualified to give it to him. He is confident that other shoe firms credit men are also qualified to do that. And they do give it to the best of his knowledge.

#### Recross-examination.

The witness was asked what he would think of a statement by a division manager of a shoe company, that in the industry some manufacturers give credit terms more favorable to some of their customers than those generally given to all of their customers, such as larger discounts and extended dating. The witness can only answer from his own experience with the company. Brown does not do that. As to the industry he could not answer. He doesn't know whether they do or not. From all his sources of information they do not.

#### [fol. 701] Further Redirect examination.

As to whether he would be likely to know if they did the witness said the chances are you would not know. They would not tell you if they were deviating.

Counsel for the Commission asked whether the division managers of a shoe company would know that, or whether he would have any access to information that the witness didn't know. The witness said he may have. If he is in on the sale at the time, why, he probably would know what the arrangements would be as well as the credit man. If some other company were making the sale he wouldn't be in on the arrangement if it were a different company.

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J. RICHARD JOHNSTON, called as a witness for the Respondent, testified further as follows:



### Direct examination.

He is the same Mr. Johnston that previously testified in this proceeding. He occupies the same position with the Respondent now as he did at the time of the previous testimony.

He has, under his direction and supervision, made a survey of outside lines of shoes carried by stores of the Brown franchise program. The survey was made in the form of a bulletin or a memorandum first, that was mailed out to all of the Brown franchise dealers, requesting that they send Brown a list of all of their footwear and rubber, canvas and slipper resources. And the dealers responded, many of them, by providing Brown with the information requested, by listing the brands of footwear that they carried in their store.

At this time a three volume exhibit was marked as Respondent's Exhibits 11, 12 and 13 for identification. The exhibits were shown to the witness. These volumes constitute the documents relating to this outside line survey that he conducted among the Brown franchise stores. In the forepart of Volume 1 of this survey, marked as Respondent's Exhibit 11, there is an explanation of the survey and the results of the survey tabulated in the manner indicated, together with a list of conflicting lines carried by the stores, as surveyed and reported by those stores.

If the witness were asked questions to develop the information set out in those explanatory sheets and summary of this survey he would testify the same as set out in those summary sheets and analysis of the survey. It states in the summary when the letter was sent out. The date of the letter is November 30, 1960. It was mailed to all franchise stores on the program at that time. Replies were received from 573 franchise stores in number. Of the 721 stores then operating on the program that is approximately 80 percent return. There was no follow-up to the person in trying to get the information. At the top of the form letter just referred to it says "Independent Retailers Division." That is the same as the Brown franchise program. At this time Respondent's Exhibits 11, 12 and 13 were offered in evidence.

## Voir Dire examination.

By Mr. Timony:

Q. Mr. Johnston, determining the results of this survey, you used the term "conflicting lines." Did you determine the definition of that term in going through these?

A. Yes, I did, sir.

Q. What did you use in so defining that term?

A. I formed my decision based on my experience and knowledge of the industry and my familiarity with the lines that were listed as to whether or not they were conflicting with Brown Shoe Company lines. Perhaps some in a broad sense and some in a minor sense. By that I mean that some were broad conflicting lines and some were short conflicting lines.

Q. And what do you mean by short conflicting lines?

A. Well, a line that might be confined to a small segment of the shoe business, we might use Clinic. Clinic is a short line of ladies' professional and duty shoes. And they are confined strictly to that type of footwear and the line is very [fol. 703] short. I believe the line in total only amounts to about eight or ten patterns and that is an example of what I would interpret as a short line.

Q. And if the independent retailer on your independent retailers division plan wrote to you and named that line, then you would, you put it in the results of your survey?

A. That is correct.

Q. And isn't it a possibility that that dealer just might have a few patterns of that particular brand shown in the results of the survey as a conflicting line?

A. It is very possible. Of course, the line, as I mentioned, consists only of a few patterns. He might——

Q. In that case—pardon me——

A. (continuing) —He might be carrying three or four of those patterns and he might be carrying six or seven or eight of that pattern.

Q. And in that line or in other lines he might be carrying just a few patterns and still be listed in the results of your survey as a conflicting line?

A. That is right.

Q. Did you, in making your definition of the term "con-

flicting line," refer to Commission's Exhibit 84, which is a list sent with a letter from Mr. Griffith which we put into evidence containing the conflicting lines and referring to a Brown line to which they conflict?

A. No, I did not refer to any list when I decided whether or not a line was conflicting as I reviewed this, the results of the survey.

Hearing Examiner Creel: The information you received did not show the patterns that these retailers were handling, did it?

The Witness: No, sir.

Hearing Examiner Creel: I am trying to determine if a line does conflict in some respects with one of the Brown lines, but in other respects does not conflict. In other words, some patterns do not conflict with the Brown patterns but if the reporting retailer showed that he carried any of this line would you consider that as a conflicting line and so record it?

[fol. 704] The Witness: Yes, I would.

Hearing Examiner Creel: All right.

By Mr. Timony:

Q. Did you use price as one of the criteria in determining what a conflicting line is?

A. You mean the suggested retail price of what we assumed those lines retailed for in the industry?

Q. Well, yes.

A. Yes.

Q. In other words, you wouldn't list I. Miller as a conflicting line with Brown, would you?

A. No.

Q. Or you wouldn't use a very cheap shoe, what is a cheap brand of shoes; by cheap I mean very inexpensive women's shoes?

A. Well, most, practically all cheap brands of ladies' shoes are either under a jobber's brand name or under a brand that is not nationally advertised.

Q. Did you just use nationally advertised brands in determining the results of your survey as to conflicting lines?

A. No, there are some nonnationally advertised lines in there. I think for example, P-i-e-r-r-e, I believe is the cor-

rect spelling, that is a jobber's line and I do not believe it is nationally advertised. But that would be a low-priced ladies' line that would conflict with Brown Shoe, one of Brown Shoe Company's lower priced line of ladies' shoes.

\* \* \* \* \*

At this time Respondent's Exhibits 11, 12 and 13 were received in evidence over the objection of Counsel for the Commission.

If there is an overlap in price at the top of an outside line and the bottom of a Brown line, the witness would still consider these to be conflicting lines. The same thing would be true for classification on the other end of the scale, which is the bottom of a higher priced line and the top of a Brown line. In other words they are degrees of conflict. As an explanation of what he just said, Florsheim would not be considered a conflicting line as listed in this document. The reason is simply because at the top of Brown's suggested retail of Roblee line it conflicts with the bottom suggested retail price of Florsheim, however, the bottom segments that he mentioned of each line are comparatively small as to that area of conflict. However, some lines that are listed here are in total conflict with Brown Shoe Company suggested retail price.

What the witness is saying then is the extent that he used in your judgment was the extent of the conflict. And as to those lines which in his judgment were parallel as to price, pattern, and the other elements that he previously testified to, he used that criteria as to what constituted a conflicting line.

The Hearing Examiner said there was another thing that troubles him in making use of this survey, and that is, suppose a given dealer shows that he carries a man's shoes that would conflict with Roblee, both price and otherwise, you would say, is there anything to show that this particular dealer handles Roblee. The witness replied, in other words, it might conflict with the Brown line very definitely but not conflict with the Brown line that that particular dealer handles. So is there anything in here that would show us whether or not it conflicts with the line that he does handle. The Hearing Examiner said he didn't think that the record

shows that every franchise dealer handles Roblee line. The witness is not sure that it shows that in the record.

The witness recalls that there was previously introduced in evidence as Commission's Exhibit 141, a schedule showing stores on the Brown franchise program that were on the program as of January 1, 1960, and joined the program after January 1, 1955. One of the dates, relating to Gryder in Biloxi, Mississippi, on page "K" of this exhibit was in error. The witness has checked what the records show as to the correct date. The correct date would be May 11, 1955. By agreement with Counsel for the Complaint the date shown for Gryder shoes in Biloxi, Mississippi, on page "K" of Commission's Exhibit 141, is changed to May 11, 1955.

Counsel for respondent made a statement that there were a number of stores mentioned at various times by witnesses [fol. 706] who testified, principally manufacturer witnesses, regarding various franchise stores and the dates when those stores went on the program, which is not otherwise shown on other exhibits. It becomes pertinent and he has asked Mr. Johnston to prepare such a list from the books and records of his division to indicate the dates that these particular stores first went on the program. This is the purpose of an exhibit which he now asks to have marked for identification as Respondent's Exhibit 14-A and B.

Respondent's Exhibit 14-A and B for identification was shown to the witness. That shows a name of a franchise store listed there, its location and the date when that particular store first went on the Brown franchise program. This was taken from the records of the witness' department. It was prepared under his direction and supervision. Respondent's Exhibit 14-A and B was offered and received into evidence without objection.

The witness said there is no Brown franchise store in High Point, North Carolina. There never was one there. The witness bases that on his knowledge of the store program in the records of his division. In reference to Brunswick, Georgia, there is no store located there which is on the franchise program. There never was a store in Brunswick, Georgia, on the franchise program. The witness has heard the name Quality Shoe Store in Brunswick, Georgia, mentioned by others, but he does not know if that store

does exist. That store is not on the Brown franchise program according to his records and his knowledge.

F. Litt in Philadelphia is not a Brown franchise store. It is a huge department store in Philadelphia, Pennsylvania. Rich's is another huge department store, in Atlanta, Georgia and enjoys the reputation of being the largest department store in southeast United States. It is not on the Brown franchise program, nor was it ever. And Litt Brothers was never on the Brown franchise program. The witness is not acquainted with a shoe store referred to as Randy's in Chisholm, Minnesota. If there was such a store, it is not on the Brown franchise program. The witness would know if it was on the Brown franchise program. [fol. 707] There was never a store of that name at that location on the Brown franchise program according to his records and knowledge.

Brown franchise stores do not receive special merchandise from Brown Shoe Company. They are not treated in any way different from any regular accounts as far as merchandise of Brown Shoe Company. There is no difference from the standpoint of receiving special merchandise. Brown does not take markdowns on merchandise from Brown franchise stores in any way.

The furnishing of signs to a retail shoe store which may be on the Brown franchise program is not related to the Brown franchise program in any way. That is handled solely through the sales division and if a dealer, whether he is a franchise dealer or a non-franchise dealer, gets a sign from the company for the exterior of his store, that is a decision that is made between the salesman in the territory and perhaps the sales manager. But whether or not the store is on the program has no bearing whatsoever as to whether the store received an exterior sign. In other words, it is just a matter of customer relationship between the store and the salesman. Signs under this arrangement are sometimes provided to franchise and sometimes to non-franchise stores, but it is not a part of the franchise program.

The witness has conducted a survey of shoe outlets in various towns and cities of 5,000 to 30,000 population in which a Brown franchise store is located. This survey was conducted under his direction and supervision. The survey



was conducted through the field staff of his division. When he talks about "field staff" he is referring to what have been called "fieldmen." In making the survey, their fieldmen were requested to make the survey just referred to, in towns of their territory between 5,000 and 30,000 population, as to the number of stores in those towns that sold shoes.

At this time Respondent's Exhibit No. 15 was marked for identification and then shown to the witness. The second page of the exhibit is the form of information request that the witness addressed to the fieldmen in initiating [fol. 708] the survey. The letter is dated November 28, 1960. Information contained in the survey was developed by the responses he received from the fieldmen pursuant to this request. The page that is set out in the first page of this exhibit as an explanation of this exhibit was prepared under his direction and supervision. If he were asked the questions that would elicit the information there set out, his testimony would be as set out in this explanation. The report contains 128 reports. Those would relate to the cities in this population group where a franchise store was located. Respondent's Exhibit No. 15 was offered in evidence.

Hearing Examiner Creel: I take it these field men that made this survey determined for themselves whether the towns fell in this population range of 5,000 or 30,000?

The Witness: No, they checked with either the local Census Bureau or from the current population census that they made available to them in their area.

Hearing Examiner Creel: Well, it would be the 1950 census, wouldn't it?

The Witness: That is right; that is correct.

By Mr. Burke:

Q. I might ask Mr. Johnston if those cities that are referred to in that population group were related and shown on this exhibit, are related to the 1960 census inasmuch as that is information that became available after that survey?

A. I was in error. That is a result of the report of the 1960 population census.

Q. But the figures on those sheets, I mean the group of towns or cities shown in Respondent's Exhibit 15, having been designated as falling within the population group of

5,000 to 30,000 are related and have been examined in connection with the 1960 census figures?

A. Yes, sir.

Hearing Examiner Creel: Well, for instance, I am looking at one, it is page 8; it looks like it is dated December 15, 1960, and there is a population figure given him that couldn't be from the 1960 census.

[fol. 709] Mr. Burke: Perhaps you misunderstand. At the time that that figure was put down that would not be true. But as to compiling them in relation to the 1960 census which became available later during 1960, in 1961, we used the 1960 census figures in grouping these documents that are contained in Respondent's Exhibit 15.

Hearing Examiner Creel: I see.

Mr. Burke: There is a companion exhibit that has already been received in evidence, Respondent's Exhibit 6, which lists the Brown Franchise Stores by states and by population groups, which are the same, where the city that is referred to in Respondent's Exhibit 15 would be coded to the population group of which a franchise store is shown on Respondent's Exhibit 6.

The Witness: This is right.

Mr. Burke: Here is the population grouping we prepared for all franchise stores, as to how they fall. (Showing to Hearing Examiner.)

Hearing Examiner Creel: Do you want to mark that?

Mr. Burke: This is in evidence as Respondent's Exhibit 6. I would offer into evidence Respondent's Exhibit 15.

Hearing Examiner Creel: Is Respondent's Exhibit 15, 100% complete?

Mr. Burke: No, sir. May I state this, that this is a survey, contains 128 reports from fieldmen; as shown in Respondent's Exhibit 6, based on population groupings, there are a total of 290 franchise stores not in metropolitan areas as defined by the Bureau of Census, but are located in towns and cities in the population group of 5,000 to 30,000. This report, therefore, this Exhibit 15, therefore contains 128 reports as to 128 towns or cities within that population range or about 45 percent of the total number of stores that would be within that population range and we feel that it is—

[fol. 710] Hearing Examiner Creel: Well, I am not suggesting that it should be larger; I just wanted to know what the facts were.

After discussion between Counsel for the Commission, Counsel for respondent and the Hearing Examiner, Respondent's Exhibit 15 was received in evidence.

#### Cross-examination.

The witness was shown Respondent's Exhibit 15, and the third page thereof. He was asked if when he stated in his survey form that retail prices are not important, he meant to show to the fieldman that the stores which he would find in the survey might sell shoes that don't in fact conflict with Brown. The witness answered, no. His purpose in putting that statement in was for the fieldman to be sure to check every store in the town involved that he was checking that sold shoes, regardless of price. Any store that sold shoes, including department store, variety store, ten-cent store, drug store, shoe repair store or grocery store.

The witness is familiar with the term five-and-ten-cent stores. To his knowledge Brown does not sell shoes to five-and-ten-cent-stores. He is familiar with the term shoe repair shops. Brown does sell to a shoe repair shop that he knows of. It is Burkhart Smeyers at Fairbolt, Minnesota. That shoe shop is a shoe repair shop in connection with a shoe store, but there are shoes sold in both the shoe store and the shoe repair shop. He does have a shoe store and he sells shoes within the shoe repair shop also. As to whether there are other shoe repair shops that Brown sells, the witness said the one that he mentioned comes to his mind immediately. He knows there are others but right at the moment he cannot specifically name them. Brown does not do this as a general practice.

Brown does not sell to drug stores as a general practice. It has sold to drug stores. Brown sells to men's clothing stores very often. Brown does not sell to hardware stores to his knowledge, unless the hardware store might by chance be a part of a department store that would sell shoes and [fol. 711] the store would go under the name of it, or the name hardware would be incorporated in the store's name. Brown does sell to sporting goods stores. It does a good

deal of business through sporting goods stores. He does not know the percentage of business that it does through sporting goods stores.

If Brown had a choice in a town of 5,000 to 30,000 of selling to a family shoe store or to a sporting goods store, as to which one it would take, the witness said in his opinion that would vary. If it is a sporting goods store, Brown's men's division might prefer to sell the sporting goods store than the family shoe store, if they saw potential for their line being greater in the sporting goods store than they did in the family shoe store. It would depend on volume. That is his purpose in wording his answer the way he did. The salesman might elect to sell the family shoe store feeling that the family shoe store would do a better job with his shoes, or he might elect to sell the sporting goods store, depending on whether he thought the sporting goods store might do a better job with his line. There is no policy in Brown which would preclude a salesman of men's shoes, say Roblee, from selling to the sporting goods store if the family shoe store wanted them in his store, and if Brown was selling to both the family shoe store and the sporting goods store.

Brown doesn't sell the same line of shoes in a town of 5,000 to two different stores as a nationwide procedure, but it does in many instances. One of Brown's divisions sells some shoes to some surplus stores. The witness is familiar with the term specialty store. Brown sells to specialty stores.

The witness does not consider that all branded shoes compete with Brown lines regardless of the retail price at which those shoes are sold. Some salesmen feel that all shoes, all branded shoes are competitive to their brand if it is the same gender.

It is possible that some of those stores in Respondent's Exhibit 15 are on a franchise program of another company. It is possible that some of those stores are owned by manufacturers of other shoes. It is possible that some of them are chain retail stores.

Department stores often buy shoes on what is called a make-up basis. To explain the term "make-up," the witness said shoes being bought on a make-up basis are shoes that are bought by a retailer from a manufacturer that are made up for him specifically. In other words, a retailer might decide to buy 72 pair of one pattern in black suede and that

shoe may not be what is considered in the industry a stock shoe that the manufacturer carries in stock, that he can supply dealers periodically, from week to week and from month to month. And if that shoe is not carried in stock, on the basis that he has just mentioned, it would be considered a make-up shoe and those 72 pair of shoes would be made for the retailer specifically.

It is possible that some of the department stores listed in Respondent's Exhibit 15 buy shoes on a make-up basis the same as many family shoe stores buy shoes on a make-up basis and all types of shoe retail establishments very often buy shoes on a make-up basis.

Brown does not sell shoes to any grocery stores that he knows of.

The witness is not familiar with how many outdoor signs Brown either gave, rented or sold to retailers last year. Any sign program that any Brown division may have is handled by the sales division individually and is not handled through the franchise store division. As to whether many Brown franchise dealers receive signs from Brown because of their high volume of purchases from Brown, the witness said, not for that reason, no, sir. Not simply because they might be a totally high volume customer from Brown Shoe Company. They might be a high volume customer for a specific line of Brown Shoe Company shoes and as a result of that the salesman that sells that line at the time at that store might decide to provide that store with a sign for his division. But if he gets a sign it is not because he might be a totally good customer of Brown Shoe Company. That is not so.

Mr. Astroth's testimony, that the average volume of sales by Brown franchisees was approximately 90,000, is a little [fol. 713] low. He think it is approximately \$97,000. They got that information from a computation of calendar year sales from the stores as a group who provided Brown with that information, and they struck an average from the group of stores reporting their total calendar year figures to them. That is not an actual figure, it is an approximate figure. He doesn't know whether it would be more than the average for a family shoe store in volume or not because he has never made a study of the average annual volume of the average family shoe store.

Q. You say that the stores in your Brown Franchise Program are choice retail outlets or do you try to get choice retail store outlets in your Brown Franchise Stores?

A. Yes, sir. We do.

Q. And are they?

A. Yes, we think they are choice.

Q. They are usually established responsible distributors?

A. Well, not in all instances, no, because an individual may decide, may be deciding to go into the business as a first retail shoe business venture.

Q. But even these ones that go into a venture you sort and pick and make sure that they are the best market available for your Brown Franchise Store, isn't that a fact?

A. Well, no. No, it is not, because an individual may come to us and, being interested in going into the shoe business in his community and if we can mutually decide together that what he is asking or seeking—when I say “mutually decide,” he actually makes the decision but as we counsel with him and advise him regarding his interest, and if he elects to go into the shoe business in the area that he decides upon, as a result of the counsel with us, why we try to be of help to him. We don't try to get the information from him and then go and seek out someone who might be better than he. And I think that is what you had in mind, is it not, sir?

Q. No, I was just trying to find out, and I think it is a fact that you do try to get the best retail outlet in any city that you can to be your Brown franchisee. If you have your choice, you certainly get the best store that you think will be a good choice retail outlet.

A. We hope that it will be that way but we do not always [fol. 714] have our choice, because I cannot say in all instances our Brown Franchise dealer is the number one store in his particular community.

Not all of the stores on the Brown franchise program specialize in selling shoes, meaning they are shoe stores as different from some of the stores listed or shown in Respondent's Exhibit 15. They have some dealers who operate a leased department in a department or a specialty store. These dealers would individually specialize but the store they operate in may not be a total shoe store. There are a few independent retailers on the program who specialize



in the sale of some other products other than shoes, such as stores who have some ladies ready-to-wear and ladies sports-wear and possibly some small amount of men's furnishings that they sell in that store in conjunction with their shoe business. There are approximately a half a dozen of those stores on the Brown franchise program. It is very very small. The majority of them do specialize in the sale of shoes.

The name of the present franchise program is the Independent Retailers Division. He thinks that at the last count there were 766 or 767 stores on the program. He doesn't know. It changes from week to week.

\* \* \* \* \*

[fols. 715-716] Redirect examination.

Brown Shoe Company does sell to retail chains.

Mr. Burke: Your Honor, that concludes the respondent's presentation.

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[fol. 717] IN THE UNITED STATES COURT OF APPEALS FOR THE  
EIGHTH CIRCUIT

No. 17,336.

BROWN SHOE COMPANY, INC., Petitioner,

VS.

FEDERAL TRADE COMMISSION, Respondent.

Petition to Review Order of Federal Trade Commission  
Before VOGEL, MATTHES and RIDGE, Circuit Judges.

OPINION—December 8, 1964.

VOGEL, Circuit Judge.

This case arises from a petition to review an order of the Federal Trade Commission directed against Brown Shoe Company, Inc. The case was originally brought by the Commission under §5 of the Federal Trade Commission Act which provides:

“§5(a)(1). Unfair methods of competition in commerce, and unfair and deceptive acts or practices in commerce, are declared unlawful.” 66 Stat. 632 (1952), 15 U.S.C.A. § 45 (a) (1) (1958).

[fol. 718] The Commission's complaint, issued October 13, 1959, alleged that Brown Shoe Company, Inc., a manufacturer and distributor of shoes, violated § 5 through the operation of its franchise stores program and by fixing the retail prices at which its products were sold by dealers.

Count 1 alleged that Brown “entered into contracts or franchises with a substantial number of its independent retail shoe store operator customers which required said customers to restrict their purchases of shoes for resale to the Brown lines and which prohibit them from purchasing, stocking or reselling shoes manufactured by competitors of Brown”. It charged that dealers having this relationship with Brown are termed “Brown Franchise Stores” and are afforded special treatment and given certain benefits not granted other customers.

Among the benefits or services listed in the Commission's

complaint were "free signs, business forms and accounting assistance participation in lower cost group fire, public liability, robbery, and life insurance policies; and special, below list prices on U. S. Rubber Company canvas and waterproof footwear". In return for these services, the complaint charged that franchise dealers must "concentrate" their purchases of shoes upon "the grades and price lines" of shoes manufactured and sold by Brown. It further charged that such dealers must "refrain from stocking and selling shoes of competitors" and that dealers who violate their franchise agreement by doing so are dropped from the program and are deprived of the benefits available thereunder.

The Commission alleged that the "purpose, intent or effect" of such practices on the part of Brown was "substantially to lessen, hinder, restrain and suppress competition" in the distribution of shoes in interstate commerce and in general to "foreclose" or "exclude" competitors from a "substantial share" of the retail dealer market, thereby further enhancing the already powerful competitive position of Brown in the shoe industry.

Count 2 of the Commission's complaint charged petitioner with resale price fixing in forcing or requiring its retail dealers to "agree to maintain arbitrary, non-competitive resale consumer prices fixed and promulgated by Brown".

In connection with Count 2, the complaint alleged that petitioner "regularly publishes and distributes" to its customers "price lists or catalog lists" containing "the consumer prices to be observed" by them and that petitioner "frequently publishes" these prices in "full page advertisements in magazines having national circulation".

The complaint charged that through its representatives and officials Brown "maintains continuous pressure" upon its dealers "to insure that they do not depart from or sell below the minimum retail prices" established. It charged that non-adherents to these prices "are immediately contacted by Brown representatives" to insure compliance by "persuasion" if possible but "if that fails, to threaten and inform" such dealers that petitioner "will discontinue doing business" with them.

The acts and practices of petitioner set forth in both counts of the complaint were alleged to constitute unfair

methods of competition and unfair acts and practices in commerce within the intent and meaning of § 5 of the Federal Trade Commission Act.

Brown, through its answer, generally denied the charges in the complaint. With reference to Count 1, however, [fol. 720] Brown admitted entering into "contracts or franchises" with approximately 259 retail dealers. In addition, it declared that there were approximately 423 dealers operating on a "Brown Franchise Program" who had not executed such written agreements.

The franchise agreement in question admittedly contained a provision stating that in return for the services and benefits described, the franchise dealers must "concentrate" their business upon products manufactured by Brown. Brown admitted that the operators of such Brown franchise stores "in individually varying degrees" accepted benefits and performed the obligations contained in such franchise agreements implicit in such program. It further admitted that in general the enumerated services and benefits are not available to those dealers "who are dropped or voluntarily withdraw" from the program.

In answer to Count 2, petitioner admitted only that it "regularly distributes to its retail shoe customers price lists or catalog sheets, certain of which contain suggested retail selling prices" and that "on occasions it publishes suggested retail selling prices in full page advertisements in magazines having national circulation".

Following extensive hearings in St. Louis, Missouri; Milwaukee, Wisconsin; Dallas, Texas; Washington, D. C.; Los Angeles and San Francisco, California; and Portland, Oregon, the Hearing Examiner issued an initial decision in which he found that the charges set forth in both counts of the complaint were sustained by the evidence, and entered an order requiring Brown to cease and desist from these practices. Brown took exception to the Examiner's findings and petitioned the Commission for a review. Its petition was granted. After hearing the matter on briefs [fol. 721] and oral arguments, the Commission modified a portion of the Examiner's decision to conform to its own views. As thus modified and as supplemented by its own opinion, the initial decision of the Hearing Examiner was adopted.

In modifying the initial decision, the Commission deleted therefrom the Examiner's findings as to the substantial effect of the Brown franchise program on competition and substitute therefor its own findings. It held that it was not necessary to examine the probable effect of petitioner's program upon competition in order to find that the program was an unfair trade practice violative of § 5 of the Federal Trade Commission Act, but that in any event, on the authority of *Brown Shoe Co. Inc. v. United States*, 1962, 370 U.S. 294,<sup>1</sup> the prospective competitive impact of the program was such as to render it unlawful. The Commission stated:

"We have found that Brown's operation of the franchise plan constitutes an unfair trade practice violative of Section 5 of the Federal Trade Commission

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<sup>1</sup> Therein the United States brought suit to enjoin consummation of a merger of two corporations (Brown Shoe Company, Inc., the petitioner herein, and the G. R. Kinney Company, Inc., eighth largest retailer of shoes) on the ground that its effect might be to substantially lessen competition or tend to create a monopoly in the production, distribution and sale of shoes in violation of § 7 of the Clayton Act, as amended 1950. The District Court had found that the merger would increase concentration in the shoe industry, both in manufacturing and retailing, eliminate one of the corporations as a substantial competitor in the retail field, and establish a manufacturer-retailer relationship which would deprive all but the top firms in the industry of a fair opportunity to compete and that therefore it probably would result in a fairly substantial lessening of competition and an increased tendency toward monopoly. In affirming the District Court, the Supreme Court said at page 346 of 370 U.S.:

"We cannot avoid the mandate of Congress that tendencies toward concentration in industry are to be curbed in their incipency, particularly when those tendencies are being accelerated through giant steps striding across a hundred cities at a time. In the light of the trends in this industry we agree with the Government and the court below that this is an appropriate place at which to call a halt."

Act. We conclude, therefore, that Count 1 of the complaint has been sustained. Moreover, an examination [fol. 722] of the market facts of the shoe industry, as developed in this record in the light of the Brown Shoe decision, persuades us that the prospective competitive impact of the franchise program is such that the standards of illegality under Section 3 and Section 7 of the Clayton Act, as amended, have been met."

On May 1, 1963, Brown filed its petition to review the order of the Commission on the grounds that such order and the findings and opinion upon which it was based are arbitrary and capricious, not supported by any substantial evidence, not in accordance with law, and lacking in due process. Petitioner has asked to have the order set aside and the complaint dismissed. The findings of the Commission and the Examiner may be summarized as follows:

Petitioner, Brown Shoe Company, Inc., is a New York corporation with its office and principal place of business in St. Louis County, Missouri. It is primarily engaged in the manufacture and distribution of nationally advertised medium-priced men's, women's and children's shoes. Brown and its subsidiaries operate over 50 manufacturing, supply and service plants located throughout the United States and Canada. In 1959, this complex ranked third in shoe pairage production among the country's approximately 900 to 1,000 shoe manufacturers. These manufacturers produced 632 million pairs of leather shoes in 1959.

The shoes manufactured by Brown and its subsidiaries are marketed on a nation-wide basis, primarily through sales at wholesale to independent retail customers, including individual shoe stores, chain stores, department stores and specialty stores. Apart from its subsidiaries, Brown was selling to approximately 6,000 retail customers at the time the complaint was issued.

[fol. 723] Brown was second in dollar sales and third in pairage production in the shoe industry in 1958 and 1959.<sup>2</sup>

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<sup>2</sup> This included the dollar sales and pairage production of G. R. Kinney Corporation, at that time a wholly-owned subsidiary of Brown operated as a separate business by court order. Brown has since divested itself of Kinney, pursuant



Although total dollar sales for the fiscal year ending October 31, 1959, were \$276,549,164,<sup>3</sup> this figure included sales at wholesale and at retail by Brown and its subsidiaries and included inter-company sales as well. Brown's sales at wholesale for the same period to its 6,000 independent retail shoe store customers were \$111,292,872. That same year (1959) the top 70 shoe manufacturing firms in the industry had total dollar sales of 1.8 billion dollars.

Brown maintains an extensive distribution system. It is organized into separate selling divisions through which it markets its various brands of shoes to its retail customers.

The division of Brown which is of paramount importance under Count 1 of the complaint is the franchise stores division. The personnel of this division include a manager, two assistants and 16 salaried "field men" who travel in assigned territories servicing various franchise accounts. The franchise division manager is responsible to the vice president in charge of sales.

Petitioner's franchise stores program has been in operation for approximately 30 years. More recently the number of dealers under this program has increased. In [fol. 724] November 1959 there were 682 retailers in the system. By October 1961, at the conclusion of reception of evidence herein, the number of franchises had increased to about 767.

Petitioner makes no distinction between dealers having

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to court order. In 1957 Kinney's net sales while a subsidiary of Brown were \$62,000,000. If Kinney's sales (and any reasonable pairage production estimate) are subtracted from the figures shown for the top seventy shoe manufacturers, Brown would be third in dollar sales and fourth in pairage produced for the 1958 and 1959. *Brown Shoe*, supra.

<sup>3</sup> Includes sales by G. R. Kinney Corporation. Kinney was formerly an independently operated company. At the time of the hearings it was a wholly-owned subsidiary of Brown. Subsequently, petitioner's merger with this company was declared illegal under § 7 of the Clayton Act, the anti-merger provision, 64 Stat. 1125 (1950), 15 U.S.C.A. § 18 (1958), and petitioner was ordered to divest itself of Kinney. *Brown Shoe*, supra.

written franchise agreements with it and those who do not insofar as any benefits or obligations under the program are concerned. In November 1957 petitioner had written franchise agreements with approximately 260 dealers.

The Brown franchise agreement requires that the retail dealer—in return for various enumerated services and benefits—must:

“\* \* \* concentrate my business within the grades and price lines of shoes representing Brown Shoe Company Franchises of the Brown Division and will have no lines conflicting with Brown Division Brands of the Brown Shoe Company.”

Several valuable benefits and services are afforded franchise holders. Specifically mentioned in the franchise agreement are: The services of field representatives; the use of merchandising forms and records; retail sales training programs; accounting system installation; group purchasing of insurance, rubber footwear and display materials; and the opportunity to participate in national and regional sales meetings.

The Commission found that the “prime motivation” of dealers in joining and continuing on the franchise program was the above-described benefits and services available to them. The Commission recognized that not every dealer utilized each benefit, but found that “collectively” these benefits achieved the intended effect; viz., attracting selected retailers to the program and inducing them to comply with its restrictive requirements.

[fol. 725] The Commission found that these requirements as set forth in the franchise agreement were applicable to “signer and non-signer franchise holders alike”; that this agreement not only “on its face” restricted competitive purchasing of franchise dealers, but that petitioner’s field men actively policed dealers to insure their concentration upon Brown lines and elimination of competing products; that franchise dealers who persisted in carrying conflicting lines were separated from the program.

The Commission found that although franchise dealers theoretically may be free to quit the program and return to their former status, the record on the whole showed that the relationship between Brown and its franchise dealers

was "reasonably stable". The Commission likewise took into account evidence showing that franchise dealers sometimes handled certain types and quantities of competitive shoes. It held that such evidence did not vitiate its finding that competitors were foreclosed from selling to franchise dealers in substantial amounts and that other evidence of record established this. (The record indicates that Brown franchise dealers purchase approximately 25% of their shoes from other manufacturers. A part of this 25% was made up of lines in competition with Brown.)

In sum, the Commission held that petitioner's operation of its franchise program, which it found effectively foreclosed competitors from making substantial sales to a significant number of desirable retail outlets, constituted an unfair trade practice in violation of § 5 of the Federal Trade Commission Act. The Commission further found that petitioner's practice of conditioning the above-described benefits of membership in the program upon adherence to the restrictive terms of the franchise agreement [fol. 726] was "akin to the operation of tying clauses generally held as inherently anti-competitive". In addition, the Commission, after examining the various economic factors in the shoe industry, was persuaded " \* \* \* that the prospective competitive impact of the franchise program is such that the standards of illegality under Section 3 and Section 7 of the Clayton Act, as amended, have been met."

As to Count 2 of the complaint, the Commission found that petitioner entered into agreements with its retail dealers that its suggested retail prices would be followed and that it attempted to enforce and had in fact effectuated compliance with such agreements. The Commission found that Brown communicates the prices it establishes in "various ways". Most of Brown's selling divisions furnish their salesmen and customers with price lists containing a retail price "suggested" by petitioner. The Commission further found that advertising is another method used by petitioner to establish retail prices. On the whole, the Commission's evidence relating to Count 2 of the complaint concerns transactions with two of Brown's franchise stores and their pricing policies.

When this case was first instituted on October 13, 1959, it obviously was the theory of the Federal Trade Commis-

sion that Brown's franchise stores program was an unlawful exclusive dealing arrangement violative of § 5 of the Act. It was so found by the Hearing Examiner and decided by him on that basis. The Commission struck such findings of the Examiner, stating:

"In short, from our review of the record, we find that respondent's operation of the franchise plan, which has effectively foreclosed its competitors from selling to a significant number of retail shoe stores, constitutes an unfair trade practice under Section 5 of [fol. 727] the Federal Trade Commission Act. Respondent's practice of conditioning the benefits of membership in the plan to adherence to the restrictive terms of the franchise agreement for the purpose of foreclosing other manufacturers from selling to its franchisees is akin to the operation of tying clauses generally held as inherently anti-competitive."

A proceeding under § 5 of the Federal Trade Commission Act is not one brought before the Commission by one party against another. It is instituted by the Commission itself and may be commenced whenever the Commission has reason to believe that "unfair methods of competition in commerce and unfair or deceptive acts or practices in commerce \* \* \*" have been used by the party against whom it proceeds.

"\* \* \* The object of the Trade Commission Act was to stop in their incipency those methods of competition which fall within the meaning of the word 'unfair'. 'The great purpose of both statutes was to advance the public interest by securing fair opportunity for the play of the contending forces ordinarily engendered by an honest desire for gain.' *Federal Trade Comm. v. Sinclair Co.*, 261 U.S. 463, 476. All three statutes [the Sherman Anti-Trust Act, the Clayton Act and the Federal Trade Commission Act] seek to protect the public from abuses arising in the course of competitive interstate and foreign trade." *Federal Trade Commission v. Raladam Co.*, 1931, 283 U.S. 643, 647, 51 S.Ct. 587, 75 L.Ed. 1324.

Our primary question is whether there was adequate evi-

dentiary basis for the Commission's finding that the Brown franchise program was an unfair method of competition and accordingly unlawful under § 5 of the Act. The Act itself provides, 15 U.S.C.A. § 45 (c) " \* \* \* the findings of the Commission as to the facts, if supported by evidence, shall be conclusive." The use of identical language with [fol. 728] reference to the findings of the National Labor Relations Board under the Wagner Act caused the Supreme Court to say *Universal Camera Corp. v. N. L. R. B.*, 1951, 340 U.S. 474, 488, 71 S.Ct. 456, 95 L.Ed. 456:

" \* \* \* The substantiality of evidence must take into account whatever in the record fairly detracts from its weight. This is clearly the significance of the requirement in both statutes that courts consider the whole record. \* \* \*

"To be sure, the requirement for canvassing 'the whole record' in order to ascertain substantiality does not furnish a calculus of value by which a reviewing court can assess the evidence. Nor was it intended to negative the function of the Labor Board as one of those agencies presumably equipped or informed by experience to deal with a specialized field of knowledge, whose findings within that field carry the authority of an expertness which courts do not possess and therefore must respect. Nor does it mean that even as to matters not requiring expertise a court may displace the Board's choice between two fairly conflicting views, even though the court would justifiably have made a different choice had the matter been before it *de novo*. Congress has merely made it clear that a reviewing court is not barred from setting aside a Board decision when it cannot conscientiously find that the evidence supporting that decision is substantial, when viewed in the light that the record in its entirety furnishes, including the body of evidence opposed to the Board's view."

With reference to what is "unfair" within the purview of § 5 of the Act, the Supreme Court has said in *Federal Trade Commission v. Gratz*, 1920, 253 U. S. 421, 427, 40 S.Ct. 572, 64 L.Ed. 993:

"The words 'unfair method of competition' are not defined by the statute and their exact meaning is in dispute. It is for the courts, not the commission, [fol. 729] ultimately to determine as a matter of law what they include. *They are clearly inapplicable to practices never heretofore regarded as opposed to good morals because characterized by deception, bad faith, fraud or oppression, or as against public policy because of their dangerous tendency unduly to hinder competition or create monopoly.* The act was certainly not intended to fetter free and fair competition as commonly understood and practiced by honorable opponents in trade." (Emphasis supplied.)

And in *Federal Trade Commission v. Raladam Co.*, supra, 1931, 283 U.S. 643, 648, 51 S.Ct. 587, 75 L.Ed. 1324:

"\* \* \* It [the words 'unfair methods of competition'] belongs to that class of phrases which do not admit of precise definition, but the meaning and application of which must be arrived at by what this court elsewhere has called 'the gradual process of judicial inclusion and exclusion.' *Davidson v. New Orleans*, 96 U.S. 97, 104. The question is one for the final determination of the courts and not of the Commission. *Federal Trade Comm. v. Gratz*, 253 U.S. 421, 427; *Federal Trade Comm. v. Beech-Nut Co.*, supra, p. 453."

Our question here is whether Brown's program could possibly be classified as an "unfair method of competition". What Brown did in the operation of its Brown franchise stores program it had been doing for at least thirty years prior to the institution of this proceeding. Similar programs are operated by its competitors, such as International Shoe Company's Merchants Service Plan and General Shoe Company's General Shoes Friendly Franchise Store Plan.<sup>4</sup> No court has gone so far as to

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<sup>4</sup> As of 1961 International Shoe had some 1,400 independent retailers under its Merchants Service Plan while some 317 shoe retailers were members of General Shoe's Friendly Franchise Store Plan.



hold like programs or methods of doing business unlawful [fol. 730] under § 5 of the Federal Trade Commission Act and such programs or sales methods have never heretofore been " \* \* \* regarded as opposed to good morals because characterized by deception, bad faith, fraud or oppression, or as against the public policy because of their dangerous tendency unduly to hinder competition or create monopoly." 253 U.S. at page 427.

The Commission would liken Brown's program to "tying arrangements", relying on *Northern Pacific Railway Co. v. United States*, 1958, 356 U.S. 1, 78 S.Ct. 514, 2 L. Ed. 2d 545, and other cases. *Northern Pacific* is factually distinguishable. The railway company there possessed a monopoly of some 40,000,000 acres of land along the route of its railroad line from Lake Superior to Puget Sound. The company tied the sale or lease of its land to the use of its hauling services by inserting "preferential routing" clauses in its contracts for sale and leases which compelled the buyer or lessee to ship over Northern Pacific's lines all commodities produced or manufactured on the land provided its rates were equal to those of competing carriers. The railway used its great economic power provided by the land to enforce the use of its transportation facilities.

Analyzing what Brown Shoe Company did in the instant case insofar as its Brown franchise stores program is concerned, we find:

1. It made agreements, some in writing but more orally, in which it agreed to furnish certain services to those of its customers who would "concentrate" their business on shoes manufactured by Brown.

2. The services were free of charge with the exception of the fact that Brown's four seasonal window display [fol. 731] props for two windows cost \$500 to \$600 per year and were available as well to other independent retail shoe store customers of Brown.

3. Brown did not have a monopoly on the services which constituted the tying product nor did it have a monopoly on the tied product—shoes.

4. Brown's competitors also furnished services in connection with the sale of their shoes.

5. Retailers were free to abandon the arrangement at any time they saw it to their advantage so to do.

6. Most of the services were available to customers who did not join in the Brown franchise program.

The Commission draws a parallel between the effect of the sale or lease by the railroad of its land in *Northern Pacific* with Brown's giving its services to the participants of Brown's franchise stores program, thus forcing them to buy Brown's shoes.<sup>5</sup>

We find no comparability between Brown's situation and that which existed in *Northern Pacific*. The Supreme Court, in holding the tying arrangement in *Northern Pacific* as being unlawful *per se*, stated at page 5 of 356 U.S.:

"\* \* \* Among the practices which the courts have heretofore deemed to be unlawful in and of themselves are price fixing, *United States v. Socony-Vacuum Oil Co.*, 310 U.S. 150, 210; division of markets, *United States v. Addyston Pipe & Steel Co.*, 85 F. 271, aff'd, 175 U.S. 211; group boycotts, *Fashion Originators' Guild v. Federal Trade Comm'n*, 312 U.S. 457; and tying arrangements, *International Salt Co. v. United States*, 332 U.S. 392.

[fol. 732] "For our purposes a tying arrangement may be defined as an agreement by a party to sell one product but only on the condition that the buyer also purchases a different (or tied) product, or at least agrees that he will not purchase that product from any other supplier. Where such conditions are successfully exacted competition on the merits with respect to the tied product is inevitably curbed. Indeed 'tying agreements serve hardly any purpose beyond the suppression of competition.' *Standard Oil Co. of California v. United States*, 337 U.S. 293, 305-306. They deny competitors free access to the market for the tied product, not because the party imposing the tying

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<sup>5</sup> The Commission states in its brief: "In this, it resembles the converse of the situation presented in *Northern Pacific*, where the railroad's freight services were 'tied' to the use of its products (the valuable lands involved). 356 U.S. 1 (1958)."

requirements has a better product or a lower price but because of his power or leverage in another market. At the same time buyers are forced to forego their free choice between competing products. For these reasons 'tying agreements fare harshly under the laws forbidding restraints of trade.' *Times-Picayune Publishing Co. v. United States*, 345 U.S. 594, 606. They are unreasonable in and of themselves whenever a party has sufficient economic power with respect to the tying product to appreciably restrain free competition in the market for the tied product and a 'not insubstantial' amount of interstate commerce is affected. *International Salt Co. v. United States*, 332 U.S. 392. Cf. *United States v. Paramount Pictures*, 334 U.S. 131, 156-159; *United States v. Griffith*, 334 U.S. 100. Of course where the seller has no control or dominance over the tying product [franchise services] so that it does not represent an effectual weapon to pressure buyers into taking the tied item [shoes] any restraint of trade attributable to such tying arrangements would obviously be insignificant at most. As a simple example, if one of a dozen food stores in a community were to refuse to sell flour unless the buyer also took sugar it would hardly tend to restrain competition in sugar if its competitors were ready and able to sell flour by itself." (Emphasis supplied.)

[fol. 733] Holding at page 7 of 356 U.S. that

"\* \* \* the undisputed facts established beyond any genuine question that the defendant possessed substantial economic power by virtue of its extensive land-holdings which it used as leverage to induce large numbers of purchasers and lessees to give it preference, to the exclusion of its competitors, in carrying goods or produce from the land transferred to them. Nor can there be any real doubt that a 'not insubstantial' amount of interstate commerce was and is affected by these restrictive provisions."

the court goes on to say at page 11 of 356 U.S.:

"\* \* \* the vice of tying arrangements lies in the use of economic power in one market to restrict com-

petition on the merits in another, regardless of the source from which the power is derived and whether the power takes the form of a monopoly or not."

While it is clear that a "not insubstantial" amount of interstate commerce is involved here, that fact alone does not make petitioner's program an "unfair" method of competition nor may the selling activities of petitioner be described as "deceptive acts or practices". In *Brown* there was no "sale" of the *typing* product (franchise services); there is no evidence that Brown's "power or leverage" in the tying product was such as to force the purchase of the "tied products" (shoes). This case presents a situation where the seller, Brown, has no control or dominance over the tying product, services; consequently, the Brown franchise program is not an "effectual weapon" to pressure buyers into taking the tied item, shoes.

If the free services which Brown Shoe Company gives its customers who buy its shoes under its Brown franchise program can be found to be unlawful under § 5 of the Act, then the next logical step would be to hold unlawful an [fol. 734] agreement by a manufacturer or distributor to advertise its products in fixed areas if retailers therein would agree to stock and to sell them.

We likewise find no comparability between the facts with which we are here concerned and *United States v. Loew's Inc.*, 1962, 371 U.S. 38, wherein the Supreme Court adopts the trial court's apt example of " \* \* \* forcing a television station which wants 'Gone With The Wind' to take 'Getting Gertie's Garter' as well as taking undue advantage of the fact that to television as well as motion picture viewers there is but one 'Gone With The Wind.' " There is more than one source from which the Brown franchise dealers can obtain the services complained about. Brown had no monopoly on services performed under the franchise program. Other manufacturers can and do render like services.

Nor do we find *United States v. Jerrold Electronics, Inc.*, E.D.Pa., 1960, 187 F.Supp. 545, affirmed by the Supreme Court on the basis of *Northern Pacific, International Salt*, etc., at 365 U.S. 567, comparable to the facts with which we

are here concerned. In *Jerrold* the trial court said at page 555 of 187 F.Supp.:

"\* \* \* Jerrold's highly specialized head end equipment was the only equipment available which was designed to meet all of the varying problems arising at the antenna site. It was thus in great demand by system operators. This placed Jerrold in a strategic position and gave it the leverage necessary to persuade customers to agree to its service contracts. This leverage constitutes 'economic power' sufficient to invoke the doctrine of *per se* unreasonableness."

There is no parallel between the facts present in *Jerrold* and those presented here. Brown's franchise program [fol. 735] was not the only program available to retailers. It did not give Brown the economic leverage to force the sale of its shoes. The tying product in *Jerrold* was highly specialized equipment which was in great demand. There is nothing specialized or unique about the services offered by Brown.

The Commission alternatively relies on *Brown Shoe Co., Inc. v. United States*, supra, 370 U.S. 294, 82 S.Ct. 1502, 8 L.Ed.2d 510, as persuading it "\* \* \* that the prospective competitive impact of the franchise program is such that the standards of illegality under Section 3 and Section 7 of the Clayton Act, as amended, have been met." We cannot agree. That case tested the illegality of Brown's acquisition of Kinney through a merger of the corporations and found that the vertical arrangements were illegal under §§ 3 and 7 of the Clayton Act. We find it utterly unpersuasive here. Brown has not "acquired" the retail outlets of those who join its program. The latter are free to leave it at any time. The only similarity between this case and the previous *Brown Shoe Co.* decision, supra, is the fact that the same corporation is involved in both disputes.

This case can be likened to *Timken Roller Bearing Co. v. F. T. C.*, 6 Cir., 1962, 299 F.2d 839, certiorari denied, 371 U.S. 861, 9 L.Ed.2d 99. There Timken was found by the Federal Trade Commission to be in violation of § 3 of the Clayton Act, 15 U.S.C.A. § 14, by following a consistent policy of "exclusive dealing". The court, in setting aside

the Commission's order and findings, said beginning at page 840:

"In support of the accusations contained in the Complaint, the Commission introduced in evidence numerous documents purporting to prove Timkin's [fol. 736] consistent policy of exclusive dealing. The majority of these documents consisted of salesmen's reports to the Timken home office, recommending the taking on of a new account or the canceling of an old one. In our view, the Commission's whole case rests upon the fact that in these reports, the salesmen either recommended Timken's taking on a new account because it would be 'loyal' to that company, or suggested that an old account be cancelled because the dealer was stocking the products of a Timken competitor.

\* \* \* \*

"\* \* \* Nor can the documents alone be substantial evidence of such a policy, inasmuch as, even if these reports show that Timken cancelled dealers' accounts because they were dealing in competitive bearings, this alone is not illegal. Perhaps the rule has best been stated for our purposes in the following language: 'The anti-trust laws do not prohibit a manufacturer or distributor from selecting dealers who will devote their time and energies to selling the former's products and a manufacturer is not compelled to retain dealers having divided loyalties adverse to the interests of the said manufacturer or distributor.' *McElhenny Co., Inc. v. Western Auto Supply Co.*, 167 F.Supp. 949, at page 954, affirmed 269 F.2d 332 (C.A.4).

"A seller has the right to select his own customers. This right is protected by the Clayton Act, itself. 15 U.S.C.A., § 13. The right has been recognized by the authorities, even where it was not expressly provided for by the statute. *United States v. Colgate & Company*, 250 U.S. 300, S.Ct. 465, 63 L.Ed. 992; *Times-Picayune Publishing Company v. United States*, 345 U.S. 594, 73 S.Ct. 872, 97 L.Ed. 1277; *Naifeh v. Ronson Art Metal Works*, 218 F.2d 202 (C.A. 10). To uphold the order entered by the Commission in this case would be, in effect, to destroy this right."



By passage of the Federal Trade Commission Act, particularly § 5 thereof, we do not believe that Congress meant [fol. 737] to prohibit or limit sales programs such as Brown Shoe engaged in in this case. No monopoly of either services or shoes could be established. The custom of giving free service to those who will buy their shoes is widespread, and we cannot agree with the Commission that it is an unfair method of competition in commerce. The more and better service that Brown gave to its customers, the more it strengthened their "loyalty" to Brown Shoe. The fact that Brown franchise dealers were successful, having an average return of 16% against an average return of other independent shoe dealers in America of 11.8% certainly does not operate against the legality of the program. We hold that the Brown franchise stores program was not an unlawful tying arrangement and that there was a complete failure to prove an exclusive dealing agreement which might be held violative of § 5 of the Act.

With reference to Count 2, it is the contention of the Commission that there was substantial evidence in the record to support its finding that the petitioner engaged in unlawful resale price maintenance. Evidence on this count involves only 2 of approximately 6,000 independent shoe retail customers of Brown—Fraver's Shoe Store of Chambersburg, Pennsylvania, and Pomeroy's Department Store in Harrisburg, Pennsylvania. The Fraver incident is very much disputed and is based upon an unauthorized letter never used. The Pomeroy incident is based entirely on disputed testimony, by far the greater weight of which favored petitioner's contention, not the findings and inference of the Commission. Even under this court's limited scope of review, *Universal Camera Corp. v. N. L. R. B.*, 1951, 340 U.S. 474, 488, 71 S.Ct. 456, L.Ed. 456, we are of the opinion that the findings and conclusions of the Commission and the order based upon them must be set [fol. 738] aside as not supported by substantial evidence on the record considered as a whole.

The order and opinion of the Commission are set aside and the Commission's complaint and each count thereof ordered dismissed.

[fol. 739] IN THE UNITED STATES COURT OF APPEALS FOR THE  
EIGHT CIRCUIT

No. 17336. September Term, 1964.

BROWN SHOE COMPANY, INC., Petitioner,

VS.

FEDERAL TRADE COMMISSION.

Petition to Review Order of Federal Trade Commission

JUDGMENT—December 8, 1964

This cause came on to be heard on the petition to review Order of the Federal Trade Commission, and was argued by counsel.

On Consideration Whereof, It is now here Ordered and Adjudged that the final Order and Opinion of the Federal Trade Commission of February 20, 1963, be, and is hereby set aside and the Complaint of the Commission and each of the Counts thereof, be, and is hereby, dismissed.

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[fol. 740] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 741] SUPREME COURT OF THE UNITED STATES  
OCTOBER TERM, 1964

No.—

FEDERAL TRADE COMMISSION, Petitioner,

vs.

BROWN SHOE COMPANY, INC.

ORDER EXTENDING TIME TO FILE PETITION FOR  
WRIT OF CERTIORARI—March 8, 1965

Upon Consideration of the application of counsel for petitioners,

It Is Ordered that the time for filing a petition for writ of certiorari in the above-entitled case be, and the same is hereby, extended to and including May 7, 1965.

Byron R. White, Associate Justice of the Supreme  
Court of the United States.

Dated this 8th day of March, 1965.

[fol. 742] SUPREME COURT OF THE UNITED STATES  
OCTOBER TERM, 1965

No. 118

FEDERAL TRADE COMMISSION, Petitioner,

v.

BROWN SHOE COMPANY, INC.

ORDER ALLOWING CERTIORARI—October 11, 1965

The petition herein for a writ of certiorari to the United States Court of Appeals for the Eighth Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

# SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1965

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No. 118

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FEDERAL TRADE COMMISSION, PETITIONER,

vs.

BROWN SHOE COMPANY, INC.

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ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF  
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No. 46—Memo from T. R. Forgan to Dick Johnston dated May 21, 1957 re McCrum-Maupin, Ft. Scott, Kansas. ....	132E	716
No. 47—Letter from Dick Johnston, Franchise Stores Division to Mr. Glen R. Maupin, dated May 28, 1957. ....	133E	717
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No. 84-A-I—List of Brown Shoe Company, Inc., Brands and Competitive Brands and Manufacturers. ....	166E	727
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No. 143—Weyenberg shipments record for Raymond J. Emerling, Hamburg, New York.....	279E	837
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No. 149—Letter from Weyenberg Shoe Mfg. Co., Ken Williams to Ray Shannon, dated May 2, 1960.....	284E	842
No. 150 & 151—Weyenberg shipments record for Blinkinsop Shoe Store, Marengo, Iowa for years 1946-1959 and 1960.....	285E	843
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No. 153—Leverenz shipments record for Meyer's Shoe Store, Watertown, Wisconsin.....	287E	845
No. 154—Letter from George A. Friedley, Leverenz Shoe Company to Meyer's Shoe Store, dated May 18, 1956.....	288E	846
No. 155—Letter from G. H. Meyers to Leverenz Shoe Co., dated March 8, 1956.....	289E	847
No. 156—Leverenz shipments record for Emerling Shoe Store, Hamburg, New York.....	290E	848

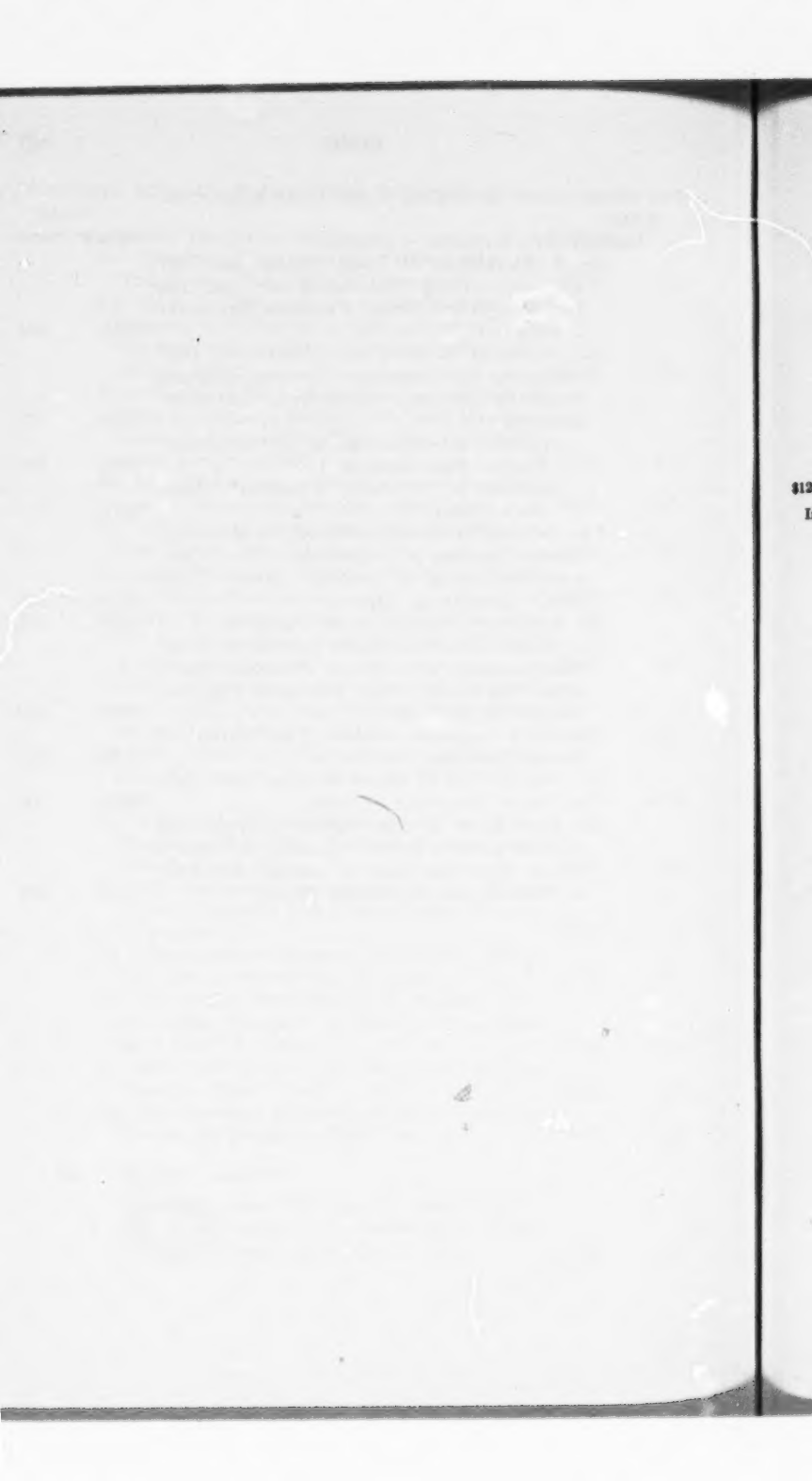
RESPONDENT'S EXHIBITS:

No. 1—Letter from The Juvenile Shoe Corporation, J. Wilkinson to Howard's Shoe Store, Hillsboro, Illinois, dated May 9, 1960.....	291E	849
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RESPONDENT'S EXHIBITS—Continued

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No. 6—Stipulation of Facts, Docket No. 7607 with list showing "Population of Cities and Towns in Which Brown Franchise Stores are Located" .....	203E	850
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[fol. 1E]

## COMMISSION EXHIBIT 2

## BEFORE FEDERAL TRADE COMMISSION

In the Matter of BROWN SHOE COMPANY, A CORPORATION

Docket No. 7606

Net Sales of Brown Shoe Company, Inc. and Subsidiaries  
For Fiscal Year Ended October 31, 1957

Brown	Moench	Bourbeuse	Wohl	Regal	G. R. Kinney
\$120,159,460.41	\$9,565,982.44	\$4,251,024.48	\$57,403,570.75	\$10,860,346.08	\$62,370,222.05

Included in the above figures are intercompany sales of \$27,664,527.61.

[fol. 2E]

## COMMISSION EXHIBIT 3

BROWN SHOE COMPANY

St. Louis 24, Missouri

W. L. H. Griffin  
Secretary

June 9, 1958.

Federal Trade Commission  
Kansas City Branch Office  
Room 808, Sharp Building  
18 East 11th Street  
Kansas City, Missouri

Attention: Mr. W. J. Sanger, Jr., Attorney-Adviser

Re Brown Shoe Company, File No. 561 0002

Gentlemen:

Following up our phone conversation and your letter, the following information is submitted:

1. The total amount of loans to customers which you refer to as "independent shoemen" as of October 31, 1957 was \$844,886.83.
2. The sales of Brown Shoe Company, Inc. and net shipments to merchants operating on the franchise

program for the fiscal years 1955 through 1957 are listed below:

Fiscal	Net Shipments Brown Only	Net Shipments to Brown Franchise Stores	% of Total
1955	\$113,053,469	\$19,841,097	17.55
1956	111,898,957	21,106,080	18.86
1957	120,159,460	21,724,564	18.08

Trusting that the above is satisfactory, I am

Yours very truly, W. L. H. Griffin.

WLHG/mj

[fol. 3E]

COMMISSION EXHIBIT 4

Brown Shoe Company's Nationally Advertised Brands

Air Step	This brand is used on women's dress and casual shoes sold through the Air Step sales division.
Buster Brown	This brand is used on children's and boys' shoes sold by the Buster Brown and United Men's sales divisions respectively.
Glamour Debs	This brand is used on girls' shoes sold by the Buster Brown sales division.
Life Stride	This brand is used on women's dress and casual shoes sold by the Life Stride sales division.
Naturalizer	This brand is used on women's dress and casual shoes sold by the Naturalizer sales division.
Official Boy Scout	This brand, manufactured under license from, and to the specifications of, the Boy Scouts of America, is used on children's, boys' and men's shoes sold by the Buster Brown and the United Men's sales divisions respectively.
Official Girl Scout	This brand, manufactured under license from, and to the specifications of, the Girl Scouts of America, is used on girls' shoes sold by the Buster Brown sales division.

<b>Pedwin</b>	This brand is used on young men's dress, sport and casual shoes sold by the United Men's sales division.
<b>Propr-Bilt</b>	This brand is used on children's shoes sold by the Buster Brown sales division.
<b>Risque</b>	This brand is used on women's casual and low heel dress shoes for young women sold by the Risque sales division.
<b>Robinettes</b>	This brand is used on girls' shoes sold by the Robin Hood sales division.
<b>Robin Hood</b>	This brand is used on children's and girls' shoes sold by the Robin Hood sales division.
<b>Roblee</b>	This brand is used on men's dress, sport and casual shoes sold by the Roblee sales division.

[fol. 4E]

## COMMISSION EXHIBIT 5

## Brown Shoe Company's Nationally Advertised Brands

The following information is supplemental to Exhibit 4 of Brown Shoe Company's letter dated May 14 to Mr. Sanger of the Federal Trade Commission.

**Air Step**—These shoes are for women only and in the medium price category.

**Buster Brown**—These shoes are in the medium price category and consist of dress, sport and play shoes for children of both sexes and for boys.

**Glamour Debs**—These shoes are for girls. They are in women's sizes in styles worn by girls, in the medium price range.

**Life Stride**—This is a fashion line of women's shoes in the medium price range retailing about \$2.00 below Air Step and Naturalizer.

**Naturalizer**—These shoes are for women only and in the medium price category.

**Official Boy Scout**—These are dress and service shoes in the medium price range with the emphasis on the higher ranges for shoes of this character.

**Official Girl Scout**—These are dress and service shoes in the medium price range with the emphasis on the higher ranges for shoes of this character.

**Pedwin**—Pedwin shoes retail in the lower medium price field.

**Propr-Bilt**—These shoes are in the medium price category and consist of dress, sport and play shoes for children of both sexes and for boys.

**Risque**—This is a fashion line of women's dress and flat shoes in the medium price range retailing about \$2.00 below Air Step and Naturalizer.

**Robin Hood**—These shoes are in the lower medium price category and consist of dress, sport and play shoes for children of both sexes and for boys.

[fol. 5E] **Robinette**—These shoes are for girls. They are in women's sizes in styles worn by girls in the lower medium price range.

**Roblee**—Roblee shoes retail in the medium price range.

**Smartaire**—This is a line of women's dress and flat shoes selling in the lower end of the medium price category.

SIZE SCHEDULES FOR AIR STEP SHOES

your detailed list of patterns there is a size schedule number on each item. The sizes shown under that schedule will be the only sizes provided. DO NOT send orders with size ranges different from those shown as any size not shown on this list will be automatically eliminated from your order.

SCHEDULE #1

AA 6-11  
A 5-11  
4 1/2-11  
4 1/2-11  
3-11  
3-11

SCHEDULE #2

AA 6-10  
A 5-10  
4-10  
4-10  
3-10  
3-10

SCHEDULE #3

AA 6-11  
A 5-11  
4 1/2-11  
4-11  
3-11  
3-11  
4-11  
4-11  
E 4 1/2-11

SCHEDULE #4

AA 6-11  
A 5-11  
4 1/2-11  
4-11  
3-11  
3-11  
4-11

SCHEDULE #6

6-11  
5-11  
4-11  
4 1/2-11

SCHEDULE #7

AAAA 6-11  
AAA 5-11  
AA 4 1/2-11  
A 4-11  
B 3-11  
C 3-11  
D 4-11  
E 4-10

SCHEDULE #9

AAAAA 6-11  
AAAA 6-12  
AAA 5-12  
AA 4 1/2-12  
A 4 1/2-12  
B 2 1/2-12  
C 2 1/2-12  
D 3-11

SCHEDULE #10

AAAAA 6-11  
AAAA 5-12  
AAA 4 1/2-12  
AA 4-12  
A 3 1/2-12  
B 2 1/2-12  
C 3-12

SCHEDULE #11

AAAA 6-12  
AAA 5-12  
AA 4-12  
A 4-12  
B 3-12  
C 3-12

SCHEDULE #14

AAAA 6-12  
AAA 5-12  
AA 4 1/2-12  
A 4-12  
B 3-12  
C 3-12  
D 4-11

SCHEDULE #16

S 6-11  
N 5-11  
M 4-11  
W 4 1/2-11  
WW 4-11

SCHEDULE #17

AAA 6-10  
AA 5-10  
A 4 1/2-10  
B 3 1/2-10  
C 3 1/2-10

SCHEDULE #18

AAAA 6-11  
AAA 5 1/2-11  
AA 5-11  
A 5-11  
B 3-11  
C 3-11

SCHEDULE #19

S 6-10  
N 5-10  
M 3-10

SCHEDULE #21

S 6-10  
N 4 1/2-10  
M 3 1/2-10  
W 4-10

SCHEDULE #23

S 6 1/2-11  
N 5-11  
M 3-11  
W 4-10

SCHEDULE #24

S 6-10  
N 5-10  
M 3-10  
W 4-10

SCHEDULE #25

AAAA 6-12  
AAA 5-12  
AA 4-12  
A 4-12  
B 3-12  
C 3-12  
D 3-12  
EE 5-11

SCHEDULE #26

AA 4-10  
B 3-10

SCHEDULE #27

AAAA 6-10  
AAA 5 1/2-10  
AA 5-10  
A 4 1/2-10  
B 3 1/2-10  
C 4-10

SCHEDULE #28

AAAA 6-12  
AAA 5-12  
AA 4 1/2-12  
A 4-12  
B 3-12  
C 3-12  
D 4-11  
EE 5-11

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# Growing Girls Size Schedule

AAA 5-10  
AA 4½-10  
A 4-10  
B 3½-10  
C 3-10

Other than these  
will be specified.

## Growing Girls' Crepes

(Single page excerpt)



### BERNIE

11801 Cherry Red. Blk. Ribbed Sole  
21802 Ind. Charcoal. Blk.  
Ribbed Sole  
41803 Grey Saddle. Blk. Ribbed Sole  
71804 Ind. Brown. Cleartone  
Ribbed Sole  
91805 Blk. Saddle. Blk. Ribbed Sole  
#8 Last



### LADUE

Valued  
31805 White. Whit. Crepe Sole  
Wedge Heel

AAAA 5½-10  
AAA 5-10  
AA 4½-10  
A 4-10  
B 3½-10  
C 3-10

#9 Last



### BLEACHER BOOT

31806 Grey Rubuck. Blk.  
Crepe Sole  
71807 Wheat Rubuck. Bro.  
Crepe Sole  
91808 Black Rubuck. Blk.  
Crepe Sole  
All Make Up



### CLIMAX

31809 Grey Saddle. Blk. Crepe Sole  
71810 Bl. Saddle. Blk. Crepe Sole  
91811 Blk. Saddle. Blk. Crepe Sole  
#8 Last  
All Make Up



### TOLEDO

21806 White & Black Saddle  
Black Crepe Sole  
#8 Last



### POWCA

21812 Ind. Saddle. Hot. Crepe Sole  
31813 White Bro. White Crepe Sole  
51814 Ind. Charcoal. Blk.  
Crepe Sole  
71815 Ind. Tan. Bro. Crepe Sole  
#8 Last

## Growing Girls' Handsewn and Littleways



### CELLO

91804 Vanilla Combi Buck. Bro.  
Rub. Sole  
11804 Red Combi Buck. Blk.  
Rub. Sole  
41804 Grey Combi Buck. Blk.  
Rub. Sole  
91804 Blk. Combi Buck. Blk.  
Rub. Sole  
Horse Last  
All Make Up



### FLIPPER

31805 Whit. Saddle. Blk. Ribbed  
Rubber Outsole  
Honey Last



### JOPPA

11809 Allover Red Rubuck. Whit.  
Crepe Sole  
31809 Whit. & Blk. Trim. Blk.  
Crepe Sole  
41809 Allover Whit. Rubuck. Blk.  
Crepe Sole  
91809 Grey Rubuck & Grey sm.  
Grey Crepe Sole  
Blk. Rubuck & Blk. sm. Blk.  
Crepe Sole  
Rosa' Last  
AAA-C  
All Rubucks -- Make Up



### PATIO

41809 Grey Kenya Pri. Blk.  
Ribbed Sole  
71809 Grey Kenya Pri.  
Cleartone Ribbed Sole  
Rosa' Last  
AAA-C



### DONORA

Cleartone Handsewn Mass.  
41814 Grey Saddle  
51814 Black Saddle



### DACATO

91819 Wheat Rubuck. Cleartone  
Ribbed Sole  
41819 Grey Kenya Pri. Cleartone  
Ribbed Sole  
71819 Mopert Kenya Pri. Cleartone  
Ribbed Sole  
Marie Last



### WANGO

91820 Vanilla Combi Buck. Whit.  
Rub. Sole  
11820 Red Combi Buck. Whit.  
Rub. Sole  
31820 Grey Combi Buck. Whit.  
Rub. Sole  
51820 Whit. Combi Buck. Blk.  
Rub. Sole  
91820 Blk. Rubuck. Whit. Rub. Sole  
Honey Last



### SHOU

Cleartone Handsewn Mass.  
11821 Red  
31821 Black  
41821 Ivory  
51821 White Smooth  
71821 Tan



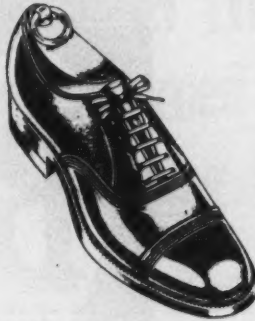
young dress in shoes  
**pedwin.**

**SPADE**

WM00 - Black

- A 8-12 Lace Oxford, Tip Pinked  
 B 7-12 & Perforated, 1/2 Double  
 C 6-12 Leather Sole, Spade  
 D 6-12 Edge, Hard Heel.  
 E 6-12

..... Clayton

**SHELBY**701M01 - Tan  
801M01 - Black

- A 8-12 Lace Oxford, Tip Stitched,  
 B 7-12 Leather Sole, Rubber  
 C 6-12 Heel.  
 D 6-12  
 E 6-12

..... Kirkwood

**SCOTT**701M02 - Tan  
801M02 - Black

- A 8-12 Lace Oxford, Tip Stitched  
 B 7-12 & Perforated, Leather  
 C 6-12 Sole, Rubber Heel.  
 D 5-12  
 E 5-12

EEE 6-12

..... Clayton

**SEINE**701M03 - Tan  
801M03 - Black

- A 8-12 Lace Oxford, Stitched  
 B 7-12 Tip, Leather Sole,  
 C 6-12 Rubber Heel.  
 D 6-12  
 E 6-12

..... Ansley

**SPARTAN**801M04 - Black  
901M04 - Golden Harvest

- A 6-12 Long Vamp Lace Oxford,  
 B 6-12 Tip Pinked & Perforated,  
 C 6-12 Heavy Nuclear Sole,  
 D 6-12 Hard Heel.

..... Brooks

**SHAWMUT**101M07 - Cordo Brown  
801M07 - Ebony Black Smooth

- A 6-12 Stitched Tip Lace Oxford,  
 B 6-12 Nuclear Sole, Stormwelt,  
 C 6-12 Rubber Heel.  
 D 6-12  
 E 6-12

..... Brooks

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**How to make money  
in the retail shoe business**

**The success story of the  
BROWN FRANCHISE STORES PROGRAM**

# Once upon a time shoe retailers learned their mistakes by making them

Once upon a time shoe retailers were pioneers. Like all pioneers, they learned their errors the hard way. And many fell by the wayside.

Things are different today. Now you can eliminate the expensive errors without ever spending a penny on them. Here's why:

For almost 80 years the Brown Shoe Company has watched the retail shoe business. We've watched thousands of retailers succeed—and thousands fail. We've seen them come and go in all kinds and all sizes of communities.

Out of these observations grew the Brown Franchise Stores Program for retailers.

Brown had been in business almost a half-century when the first independent retailer began operating under the new program. That was 35 years ago. Since that time, we've refined and perfected the money-making ideas—and put them into a close-working program between the Brown Shoe Company and independent retailers—the most successful ever developed.

What makes the Brown Franchise Stores Program so successful is described on the following pages. You'll see how you, too, can make money in the retail shoe business.

What is the  
one big dividend  
the Brown Franchise Stores  
Program is paying to the  
more than 600 independent  
retailers operating  
under this plan?

Reta  
BRO  
are  
in S

he don't h  
business b  
increase h  
son (even  
The main  
he wants  
the shoe  
According  
next year  
the retail

BROWN  
C

Loc  
Pop  
Do  
Vol  
W  
Ex  
S

INVEST  
NET  
NET  
INVEST

Ty  
Bro

# Retailers operating under the BROWN FRANCHISE STORES PROGRAM are averaging the highest returns in shoe retailing today

Who doesn't honestly know of anyone who is in the shoe business because he likes the smell of leather. Or because he wants to meet people. Or to be his own boss (even though that's mighty important).

The main reason, of course, is the pay-off. Every man wants a big one, so let's look at the profit record of the shoe business.

According to the Bureau of Labor statistics for a recent year, there were more than 19,500 independent shoe retailers in America. The average return on their

investment for the year was 11.8%.

For the same year, more than 600 independent shoe retailers operating under the Brown Franchise Stores Program in 46 states averaged a 16% return!

For 36 years we have watched retailer after retailer (300 during the past 5 years alone) begin operations under the Brown Franchise Stores Program. Each year more and more of these independent retailers are setting the volume and profit records in their communities.

## BROWN FRANCHISE STORE CASE HISTORY

Location . . . . . Ohio  
Population . . . . . 6,000  
Date established . . . . . 1950  
Volume . . . . . \$4,500  
Mark-up . . . . . 38.7%  
Expenses . . . . . 25.2%  
Stock-turn . . . . . 1.9x

INVESTED CAPITAL . . . \$2,832  
NET PROFIT . . . . . \$8,704  
RETURN ON INVESTMENT . . . **265%**

## BROWN FRANCHISE STORE CASE HISTORY

Location . . . . . Alabama  
Population . . . . . 72,000  
Date established . . . . . 1933  
Volume . . . . . \$158,952  
Mark-up . . . . . 40.6%  
Expenses . . . . . 26.8%  
Stock-turn . . . . . 2.4x

INVESTED CAPITAL . . . \$7,618  
NET PROFIT . . . . . \$28,818  
RETURN ON INVESTMENT . . . **329%**

## BROWN FRANCHISE STORE CASE HISTORY

Location . . . . . Colorado  
Population . . . . . 20,300  
Date established . . . . . 1950  
Volume . . . . . \$42,362  
Mark-up . . . . . 40.0%  
Expenses . . . . . 22.4%  
Stock-turn . . . . . 3.3x

INVESTED CAPITAL . . . \$8,703  
NET PROFIT . . . . . \$23,188  
RETURN ON INVESTMENT . . . **347%**

## BROWN FRANCHISE STORE CASE HISTORY

Location . . . . . New York (two)  
Population . . . . . 338,000  
Date established . . . . . 1903  
Volume . . . . . \$714,000  
Mark-up . . . . . 38.6%  
Expenses . . . . . 34.1%  
Stock-turn . . . . . 2.1x

INVESTED CAPITAL . . . \$101,994  
NET PROFIT . . . . . \$6,119  
RETURN ON INVESTMENT . . . **15.8%**

## BROWN FRANCHISE STORE CASE HISTORY

Location . . . . . Illinois  
Population . . . . . 14,000  
Date established . . . . . 1936  
Volume . . . . . \$152,000  
Mark-up . . . . . 38.4%  
Expenses . . . . . 26.5%  
Stock-turn . . . . . 2.1x

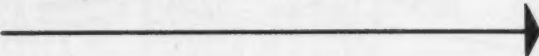
INVESTED CAPITAL . . . \$40,066  
NET PROFIT . . . . . \$24,601  
RETURN ON INVESTMENT . . . **50.3%**

Typical case histories from our files. Here are just a few examples of the hundreds of Brown Franchise Stores averaging the highest returns in shoe retailing today.

610

# How can the BROWN FRANCHISE STORES PROGRAM help you make bigger profits?

*What are the advantages a retailer under the Brown Franchise Stores Program has over the retailer who is fighting today's rugged competition by himself?*





# 9 of the top brands in America

## BUSTER BROWN

—the broadest, best known, biggest selling line of children's shoes in America. Parents have shown their trust in Buster Brown fit and quality for over 50 years. Buster Brown covers the market with up-to-date styles for infants, children, growing girls, and teen-agers.

*Buster Brown*

## ROBIN HOOD

—a complete line of smartly styled, well-made and moderate-priced shoes for children. Representing one of the biggest profit opportunities in the shoe business, the Robin Hood line is designed for a market conservatively estimated at a billion dollars.

*Robin Hood*

## ROBLEE

—one of the most popular line of men's shoes in the middle-price field. The Roblee combination of quality and styling has broadened the market for this fast-selling line to include men of all ages, in all walks of life.

*Roblee*

## PEDWIN

—the "big market" line designed for young men who buy twice as many shoes as their fathers and brothers. A bell ringer at the cash register, the Pedwin line takes all retail promotion honors by featuring the "hottest shoe of the month" every month.

*pedwin*

## NATURALIZER

—the fastest growing line of women's shoes in the business. Naturalizer basic types, casuals, and dress patterns have long been recognized as "the shoe with the beautiful fit."

*Naturalizer*

612

Air Step

life stride

westport

Risque

BUSTER BROWN  
OFFICIAL BOY SCOUT SHOESBUSTER BROWN  
Official Girl Scout Shoes

—the fastest selling women's shoe there is  
Every pattern in the full Air Step line features  
"The Magic Sole"—a magic selling feature  
you can demonstrate right at the fitting shoe.

## LIFE STRIDE

—a complete line of casual, classic, dress, and  
sport shoes for women. Life Stride offers the  
latest in fashion in a range where millions of  
young women buy.

## WESTPORT

—the only really complete line of women's  
low-heeled casuals and flats in the big  
volume field—a line of proved promotion leaders.

## RISQUE

—a promotional, highly salable line of  
and little heels. The Risque line is helping  
Brown Franchise retailers everywhere cash in  
on a changing market, brought about by the  
trend to casual living.

## OFFICIAL SCOUT SHOES

—a sales plus. Brown Franchise retailers  
have been providing Boy Scouts and Girl  
Scouts with their official shoes (under the  
Buster Brown or Westport label) for 25 years.

**Selling the Brown Brands as a family  
gives you other profitable advantages:**

- You carry shoes for all ages and both sexes. Once you've sold Mom or Dad or the kids, the whole family is your customer.
- Every one of your lines fits into a range of prices that seven out of ten families will pay.
- Every pattern you carry is ordered and delivered from one dependable source.
- You concentrate on fewer lines which eliminates overlap and conflict, simplifies merchandising, and strengthens your promotion.

# ADVERTISING AND PR

**Biggest National  
Advertising Program  
of any shoe family**

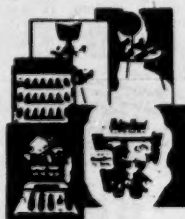
Brown Franchise Dealers are continuously supported by national advertising on television and in America's most influential magazines. Millions of families know the Brown Brands through the dominating advertising they see in their favorite publications month after month. As a result, your customers are pre-sold on the shoes you sell—prestige is built up for your store—and your own promotion dollars become more productive.



# PROMOTION PROGRAMS! TV

Brown Franchise Retailers are fully supported with the promotion material needed to help build store volume. Brown supplies radio and TV commercials, newspaper mats, display materials and full-scale direct mail campaigns. All this material is co-ordinated with the big program of national advertising for increased effectiveness. Many special-event promotions come from a pool of ideas successfully used by other members of the Brown family.

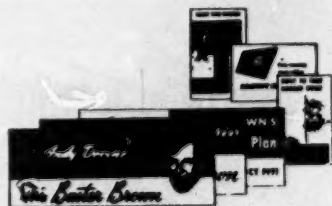
## Complete Promotion Programs for Your Own Store



Display units



Newspaper advertising mat services



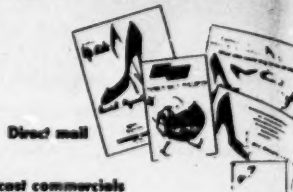
Streamers—Counter cards



Window displays



Brand identification signs



Direct mail

Plus: Broadcast commercials  
National tie-ins  
Special promotions

[fol. 31E]

Commission Exhibit 22-J.

# TV SHOWS SELL BROWN

FOR

## *Robin Hood*

THE BUFFALO BILL JR. SHOW

BUFFALO BILL JR.

Star of the great new  
Robin Hood Western

A new Western . . . full of life  
and full of appeal for boys and  
girls . . . with the stars of the  
show themselves telling the  
kids about the Robin Hood  
Shoes sold by Brown Franchise  
Retailers.

The profitable  
is delivered to Brown

The attention of millions of kids  
is focused on Buster Brown and

- 2 BIG TV SHOWS
- TRAFFIC-BUILDING PROMO  
Giveaways • Comic Books •
- TIE-IN KITS Complete . . . for

CALAMITY

his cute 12-year-old  
sister who shares his  
adventures

# BRANDS FOR CHILDREN

FOR

## *Buster Brown*



Buster Brown's  
new super salesman,  
**CAPTAIN KANGAROO**

### Kids' Market Franchise Retailers

Robin Hood Shoes and the  
toes that sell them

**IONS** At peak selling seasons  
Big Contests

each promotion



The **CAPTAIN KANGAROO SHOW**—now on the CBS—TV network for Buster Brown every Saturday morning. The Captain item sells Buster Brown shoes and the kids listen to what he tells them.

Buster Brown is the largest advertiser of any brand of shoes in America . . . since 1942, the leader in broadcast. Now this big TV show—**CAPTAIN KANGAROO**—to attract millions of kids and win their loyalty for Buster Brown shoes.



## An Accounting and Record System that eliminates the No. 1 cause for failure in Shoe Retailing

Business and government authorities agree that poor records cause more retail failures than any other one factor.

As a Brown Franchise Store, you have the benefits of an efficient, standardized accounting and record system. Your Brown Franchise fieldman explains how it works, helps you install and maintain it.

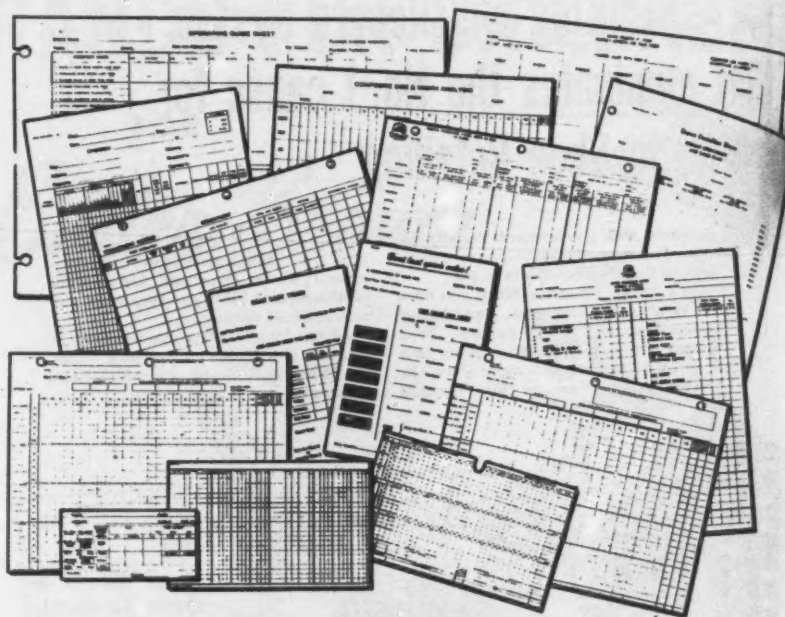
This system keeps you fully informed

on the condition of your business; analyzes your profit structures; helps you control your inventory and plan sales and purchases; and helps you keep your business in liquid condition.

All the forms and records necessary to maintain this system are provided—without charge—to Brown Franchise Store operators.



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## An Efficient Merchandising System that sets a fast pace for stock turns

Without the proper forms, it takes some mighty lucky guessing to know what to buy and rebuy; when and what to promote; and how to minimize odds and ends of styles and sizes that must be cleared out at the end of every season.

These important methods of producing profit are all just an everyday part of doing business with the Brown Franchise Stores merchandising system. The proven

and perfected forms give you complete information on dollar as well as pairage open-to-buy; color and material guides; sales and stock by lot number; and data for profitable reordering of basic, best selling patterns.

As with the exclusive accounting forms, this merchandising system is available only to retailers operating under the Brown Franchise Stores Program.



## Retailing Experts you can call on anytime with any problem

**A Home Office Staff of Specialists.** As a Brown Franchise Retailer, you have as many questions as the average shoe retailer, but a lot more answers. Our Headquarters Staff in St. Louis is organized specifically to help you with merchandising, store operation, finances, store layout and design, display and advertising, and ideas.

These men are specialists in the shoe business. They are immediately available to you by mail, phone, or in person in St. Louis whenever you need them.

In addition, the Staff keeps you up to date on trends and changes in shoe retailing with regular advisory letters and bulletins.



**Field Representatives Cover 48 States.** Today there are Brown Franchise Store experts covering all 48 states—ready to give you fast, personal service. Like the St. Louis staff, these men devote their full time to you in the Brown Franchise Stores Program.

Although the list of services provided by the fieldmen fills several pages, their responsibilities fall under 5 general heads: 1) Laying the groundwork for new Franchise Stores; 2) Helping an established shoe merchant change to the Brown Franchise Stores Program; 3) Helping a Franchise Retailer set up a complete operating plan; 4) Furnishing merchandising and management counsel; and 5) Helping a retailer plan his promotions and coordinate them with Brown's national promotions.

# Color Slides and Materials

## for setting six new show windows a year

As a Brown Franchise Retailer, you get a year-round window service. This is one of the most important promotional helps of the Program since windows help bring in 6 out of every 10 customers who walk into a shoe store. Here's how the service works:

Our display experts in St. Louis set up 6 attractive windows a year. These are photographed in color and sent to you in the form of 3-D slides to help you set them up. (Brown furnishes you with a small 3-D viewer as part of your basic equipment.)

All materials needed to trim your windows are sent to you by the Brown Shoe Company at a very nominal cost.

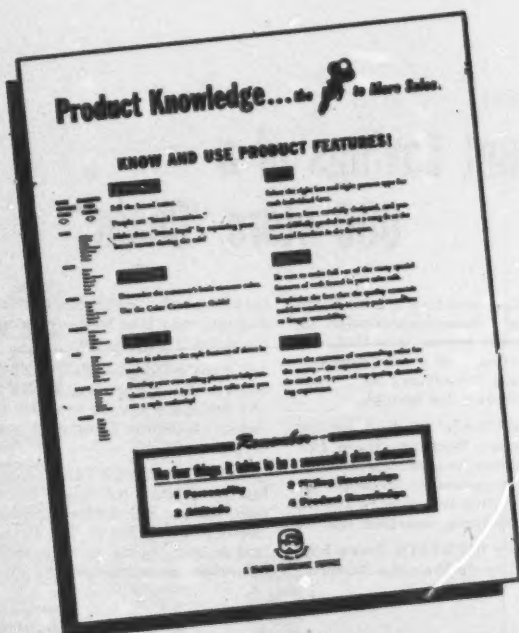
3-D COLOR SLIDES of actual show windows are given to you for at least 2 window changes a season. A 3-dimensional color slide viewer is part of your regular equipment.



### Display Ideas

Another promotional service of the Brown Franchise Store Program is interior displays. From time to time, you receive display ideas and suggestions ranging from complete interiors to single new promotional devices.





## A "FREE COURSE" in Shoe Salesmanship for all your people

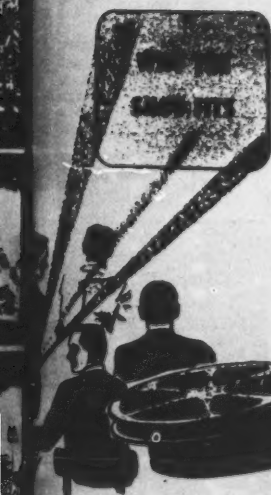
For years the Brown Shoe Company has recognized the need for shoe training and has taken steps to give retailers the most up-to-date methods available for training their personnel.

If you call in a field representative on this problem, he arranges a store meeting and shows your people a sound-slide film entitled "How to Sell More Shoes." Produced exclusively for Brown Franchise Stores, this film clearly explains the six basic elements of a shoe sale.

In conjunction with the film, he uses a chart presentation, "The Key to More Sales" which points out to salesmen how brand, color, style, fit, wear, and price can be turned into sales at the fitting stool.

Another audio-visual training tool which Brown furnishes you is the second color motion picture, "Why the Shoe Fits." This movie

gives salespeople a "behind-the-scenes" look at shoe manufacturing—from the first design by an artist to the time they open the box for a sale. ("Why the Shoe Fits" can also be shown to service clubs, civic and educational groups—an opportunity to make many valuable contacts.)



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## Discount Savings of a 600 store "Chain"

All shoe retailers have certain basic needs. Because of the volume represented by the Franchise Stores, Brown Shoe Company can purchase many of these items centrally and pass the savings on to each retailer. Here are a few examples:

**GROUP INSURANCE.** As a retailer under the Brown Franchise Stores Program you pay less for insurance on stock, fixtures and improvement coverage. An automatic reporting system saves you the trouble of submitting insurance reports.

**STATIONERY SUPPLIES.** Brown buys forms for the Brown Franchise Stores ac-

counting and merchandising systems in such quantity that they are furnished to the stores free of charge.

**ACCESSORIES AND FIXTURES.** Such items as X-ray machines, display fixtures and fitting devices are available through Brown's Accessory Division at important savings.

**A HOUSE SLIPPER LINE.** A complete line of "Night Life" house slippers for men, women, and children is available to Brown Franchise Stores. The line is organized so that buying, merchandising, and promotion is very simple and profitable.

## An Exchange of Selling Ideas at Conventions and Regional Meetings

Everybody has a good time at the National Convention of Brown Franchise Retailers each February.

But more important—successful independent shoe retailers in America get together to exchange ideas that help them operate their businesses more efficiently and profitably. They go home with a broader view on such subjects as footwear style and color forecasts, economic conditions; latest methods of promoting, selling, merchandising, and management.

All Brown Franchise retailers and their personnel are invited to the National Convention. In addition, retailers attend regional sales meetings throughout the year.



What important steps does the



**What important steps does the  
BROWN SHOE COMPANY take  
to establish a retailer under  
the Brown Franchise  
Stores Program?**



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# How BROWN helps a new Brown Franchise Stores Retailer get the best start possible

- Brown architects help you design a new store—or remodel an old one

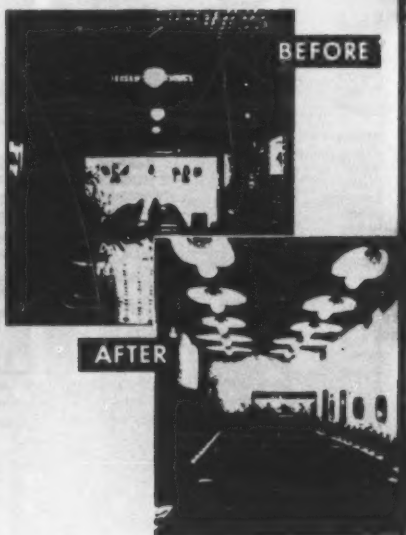
"A better looking store than the one across the street"—both inside and out—is a valuable asset in today's highly competitive market.

Thus, one of the first groups Brown calls in to help establish a new Franchise Store is our Store Planning Service.

Designing the store is a science. It includes the physical appearance and ar-

range of all elements. It incorporates the latest thinking (and successful experience) in merchandising, selling, and displaying footwear and accessories.

In the case of either a new store, or a remodeling project on an old store, Brown Shoe Company furnishes complete working blueprints to your contractor—with-out charge.



## Setting up a financial plan

Here's where the experience of the St. Louis staff and the field representative comes in handy. Working with hundreds of stores, they can give you a working financial plan for the most successful operation of your business. Here is a rough example for a store anticipating annual volume of \$100,000.00:

[illegible]

RE

## Promoting the opening

Now that you're all ready to go, there's just one big thing left to do—fill the house on opening day. Again the Brown Shoe Company's wide experience in opening new stores is called upon to help you plan a successful opening. We help you with an opening day advertising campaign in your newspaper; a direct mail campaign, if appropriate; grand opening displays and in-store promotion ideas. The fieldman in your territory will probably even help you trim your windows. And we'll be right there to help you "celebrate" on opening day!

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## Answers to important questions you may have

- Is the Brown Franchise Stores Program available to anyone?

Frankly, no. The Program is best fitted for the outstanding dealer prospective dealers in each community. It is not a cure-all for merchandise ills in the retail shoe business. The Program is most successful when it is put into the hands of an honest, ambitious man with a desirable location, adequate capital, retail experience—and a desire to establish his store in the most popular place in his community to buy shoes.

- How much experience should you have?

The successful retailer operating under the Brown Franchise Stores Program should have a good working knowledge of store management, accounting, and record keeping. He should firmly believe that advertising and promotion pay. He should also know buying, fitting, and selling shoes—but also, successful retail experience is an excellent substitute.

- How much capital do you need?

That depends on sales objectives, potential volume, number of lines carried, overhead, etc. You should be able to furnish enough for initial inventory, physical plant, and a reasonable amount of working capital.

You are, of course, entitled to a line of credit based on volume. Under the Brown Franchise Stores Program, you are given normal 30-day terms. Opening stock orders require payment of 1/4 cash in advance, the remainder on regular terms.

Capital should be free and unencumbered. One answer to this problem is to incorporate, making your lenders stockholders.

- Where can you get more information?

If the Brown Franchise Stores Program sounds interesting to you, get in touch with us at the Brown Franchise Stores Division, Brown Shoe Company, 2300 Maryland, St. Louis, Missouri. Send us as much initial information as possible—the type of operation you have or need, a location, the lines you want to carry, your experience, and the amount of capital you have available.

# The next move toward BIG PROFITS in the Retail Shoe Business is up to YOU!

Hundreds of shoe retailers have stood at the same crossroads where you stand now.

Over 600 of them decided that the Brown Franchise Stores Program was the best one in the shoe business for independent shoe retailers.

With them, as with you, we did all we could up to this point. We explained the Brown Franchise Stores Program. We pointed out how the retailers operating under this program have become the most prosperous group of shoe retailers in America.

The final decision to join this successful group rested with them. In your case—it's up to you.

628

BFS

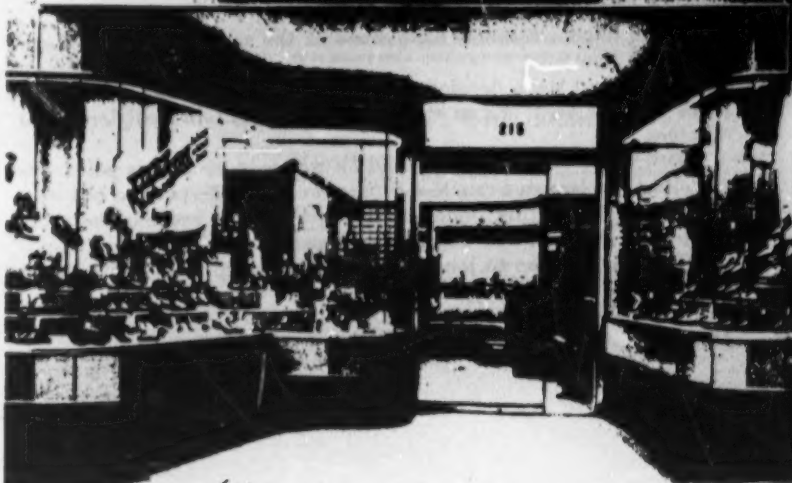
BROWN FRANCHISE  
STORES

B & B

*Handwritten signature*

ESTD 1911

SHOES







**THE BROWN SHOE COMPANY**

8300 Maryland Ave., St. Louis 24, Missouri

630

BROWN FRANCHISE

*A Contrast*  
*48 Buster Brown*  
*Palmer*

PETER A. SIKES SHOES.  
 CRESTWOOD SHOP. CTR..  
 3508 CRESTWOOD BLVD..  
 BIRMINGHAM, ALA.  
 (A) BB R

SIKES A. BRATTON SHOE CO..  
 ROXBURCK SHOPPING CENTER.  
 9166 4TH AVE. SO..  
 BIRMINGHAM, ALA.  
 BB R

BAXTER'S SHOE STORE.  
 104 S. THREE NOTCH ST..  
 ANDALUSIA, ALA.  
 BB R

W. KING HOLT.  
 BRENTON, ALA. BB R  
 (A)

BAXTER'S SHOE STORE.  
 DOTHAM, ALA. BB R

PETERS A. SIKES SHOES.  
 2920 SOUTH 18TH ST..  
 HOMEWOOD, ALA.  
 (A) BB R

COWAN'S SHOE STORE.  
 6 EAST CENTER ST..  
 FAYETTEVILLE, ARK.

HORNROCK'S SHOES.  
 812 'G' ST..  
 7

DESHIELDS-LARSON SHOES.  
 NORMANDALE SHOPPING CENTER.  
 354 E. PATTON,  
 MONTGOMERY, ALABAMA. R

M. M. DE SHIELDS.  
 % ALEX RICE, INC..  
 BOX 93.  
 MONTGOMERY 1, ALA.

DE SHIELDS & MC LEOD.  
 SHOE DEPT. B. % LEON'S.  
 116 BROAD ST..  
 SELMA, ALA. R

FOOTE SHOES.  
 312 MONTGOMERY.  
 SHEFFIELD, ALA. R

WAGNER'S SHOE STORE.  
 2109 BROAD ST..  
 TUSCALOOSA, ALA. BB R  
 (A)

DAVID'S SHOES.  
 28 N. FIRST ST..  
 PHOENIX, ARIZ. BB R

DAVID SHOES PARK CENTRAL.  
 32 PARK CENTRAL MALL.  
 PHOENIX, ARIZ.  
 (A) BB R

MONDAY SHOE STORE.  
 BATESVILLE, ARK. BB R

SHERMAN'S SHOES.  
 BENTON, ARK. BB

FLOYD A. WHITE & SONS.  
 313 W. MAIN ST..  
 BLYTHEVILLE, ARK. BB

M. P. WATTS & BROS..  
 BUSTER BROWN SHOE DEPT..  
 113 ADAMS AVE.. S.E..  
 TALLADEGA, ARK. BB R

MONDAY-PO-ELL S.S., INC..  
 1101 OAK ST..  
 CONWAY, ARK. BB R

DESERT SHOES.  
 608 MAIN ST..  
 7

PETERS & SIKES SHOES.  
8920 SOUTH 18TH ST..  
HOMEROD, ALA.

COVAN'S SHOE STORE,  
6 EAST CENTER ST..  
FAYETTEVILLE, ARK.

BB R

DAVID'S SHOES.  
28 N. FIRST ST..  
PHOENIX, ARIZ.

HORNROCK'S SHOES.  
812 'G' ST..  
ARGATA, CALIF.

BB R

PATES SHOE STORE.  
810 CENTRAL.  
HOT SPRINGS, ARK.

BB R

RICARDS BOOTERY.  
2029 CHESTER AVE..  
BAKERSFIELD, CALIF.

BB R

JOSEPH FOOTWEAR.  
403 S. MAIN.  
JONESBORO, ARK.

(A) BB

MC QUEEN'S SHOES.  
209 E. MAIN ST..  
BARSTOW, CALIF.

(A) BB R

BURTON'S SHOE STORE.  
236 MAIN ST..  
CHICO, CALIF.

BB R

WELEY'S CANOQA BOOTERY.  
21715 SHERMAN WAY.  
CANOQA PARK, CALIF.

BB

DESERT SHOES.  
608 MAIN ST..  
BRAWLEY, CALIF.

BB R

HALL & MUNDAY SHOE STORE.  
414 FRONT ST..  
NEWPORT, ARK.

BB R

RICHARD'S SHOES.  
6617 S. ATLANTIC BLVD..  
BELL, CALIF.

BB R

THE BIRDSONG CO..  
COALINGA, CALIF.

BB R

GRANDE'S SHOE STORE.  
1406 PARK.  
ALAMEDA, CALIF.

BB R

HODGSON'S SHOE STORE.  
2112 SHATTUCK AVE..  
BERKELEY 4, CALIF.

BB R

BRILL'S SHOE STORE.  
165 N. 8TH ST..  
COLTON, CALIF.

BB R

CLARK'S CHILDREN'S BOOTERY.  
132 E. CENTER.  
ARAHU, CALIF.

(A) BB R

NEPPHILL'S SHOES.  
216 HOBSONWAY.  
BLYTHE, CALIF.

BB R

RICARDS BOOTERY.  
1205 MAIN ST..  
DELANO, CALIF.

BB R

632

7

CASSIDY'S SHOE STORE.

121 W. 7TH ST..

MANFORD, CALIF.

(A) BB R

7

CASSIDY'S SHOE STORE.

715 WEST BEAN,

715 GARDEN SHOPPING CENTER.

FREMONT, CALIF.

(A) BB R

7

RICHARDS SHOES.

8212 FIRESTONE BLVD..

DOWNEY, CALIF.

(A) BB R

7

RICARDS BOOTERY.

925 BAKER ST..

E. BAKERSFIELD, CALIF.

BB R

7

DESERT SHOES.

548 MAIN ST..

EL CENTRO, CALIF.

BB R

7

HORNBOOK'S SHOE STORE.

JOHN P. MORTON.

517 FIFTH ST..

EUREKA, CALIF.

BB R

7

JOHN A. ROMA IPSEWICH.

FILLMORE BOOTERY.

240 CENTRAL AVE..

FILLMORE, CALIF.

(A) BB

JACKSON'S SHOE STORE.

210 FRANKLIN

ST. BAKERSFIELD, CALIF.

BB R

7

JERRY'S SHOES.

65 PIER ST..

HEMOSA BEACH, CALIF.

(A) BB R

7

BURTON'S SHOE STORE.

1112 FIRST ST..

LIVERMORE, CALIF.

(A) BB R

7

BURTON'S.

LODI, CALIF.

BB R

7

FUMAL SHOES.

430 PINE.

LONG BEACH, CALIF.

DANIELS &amp; JONES, INC..

2150 VIKING.

LAKEWOOD VILLAGE.

LONG BEACH E. CALIF.

(A) BB

7

LISHEIT'S SHOES.

435 SOUTH 'A' ST..

OZMARD, CALIF.

BB

7

GRANDE'S SHOEWEILT S. B..

615 MAIN ST..

MARTINEZ, CALIF.

BB R

7

BARON'S SHOES.

LOS ALTOS PARKING.

FREMONT &amp; SPRINGER RD..

BB

210 FRANKLIN,  
LOS ANGELES, CALIF.

126 MILL STREET,  
GRAND VALLEY, CALIF.

430 PINE,  
LONG BEACH, CALIF.

7  
RANCHO SHOES.  
LOS ALTOS RANCHO.  
FREMONT & SPRINGER RD..  
LOS ALTOS, CALIF. FRED WEIDEMAN  
(A) BB R

7  
GRANDE'S BROWNBILT S. B..  
615 MAIN ST..  
MARTINEZ, CALIF. BB R

7  
LINNETT'S SHOES.  
435 SOUTH "A" ST..  
OAKLAND, CALIF. BB R

7  
AXELINE FINE SHOES.  
4740 WHITTIER BLVD..  
LOS ANGELES, CALIF. BB

7  
BURTON'S SHOE STORE.  
514 D ST..  
MARTSVILLE, CALIF. BB R

7  
BURTON'S SHOE STORE.  
1359 MYERS ST..  
OROVILLE, CALIF. BB R

7  
KURT'S SHOES.  
8326 S. VERNON AVE..  
LOS ANGELES 44, CALIF.  
(A) BB R

7  
HIVELY'S.  
525 17TH ST..  
MERCED, CALIF. BB R

7  
BERDON'S SHOES.  
1/2 HERTEL-BARNETT,  
250 E. COLORADO BLVD..  
PASADENA, CALIF. (A) — R

7  
RHEE'S SHOES.  
S. GRENBERG & R. RANDOLPH, PROPS..  
1504 E. FLORENCE,  
LOS ANGELES, CALIF. BB  
(A)

7  
SANDLERS SHOE STORE,  
600 WHITTIER,  
MONTESIELLO, CALIF. BB R  
(A)

7  
HAROLD'S SHOES.  
937 MICHILLINDA,  
EASTINGS CENTER,  
PASADENA, CALIF. (A) BB R

7  
WESTWOOD BOOTERY,  
10766 WEST PICO BLVD..  
LOS ANGELES 94, CALIF. BB R

7  
PHILLIPS BOOTERY,  
5257 LANKEKSHIM BLVD..  
NORTH HOLLYWOOD, CALIF. BB R  
(A)

7  
DAN'S SHOES.  
LINDA MAR SHOPPING CENTER,  
1895 LINDA MAR BLVD..  
PEDRO VALLEY, CALIF. BB R  
(A)

7  
FUNDYAN'S LYNNWOOD BOOTERY,  
EVA FUNDYAN JR. & MARTHA L. FUNDYAN  
11335 LONG BEACH BLVD..  
LYNNWOOD, CALIF. BB

7  
CHAPMAN'S SHOES.  
1431 GRANT AVE..  
NOVATO, CALIF. BB R  
(A)

7  
GRANDE'S SHOES.  
518 RAILROAD AVE..  
PITTSBURG, CALIF. BB R

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## Commission Exhibit 24A

CASH MERCANTILE STORE CO.,  
403 N. MAIN,  
PLACENVILLE, CALIF. BB R

CASSIDY SHOE STORE.  
403 N. MAIN.  
PORTERVILLE, CALIF. BB R  
(A)

CARLS SHOES.  
347 WALNUT.  
RED BLUFF, CALIF. BB R  
(A)

BURTON'S BROWNBLT SHOE STORE. 7  
1416 MARKET ST.,  
REDDING. CALIF. BB R

JERRY'S SHOE STORE.  
256 HERMOSA AVE.,  
REDONDO BEACH, CALIF. BB R

HAROLD'S SHOE STORE.  
18 E. STATE ST.,  
PLACERVILLE, CALIF. 7

SMITH'S SHOE STORE.  
588 FARMER'S LANE.  
MORTGAGNEY VILLAGE. 7

## Commission Exhibit 24B

REDWOOD BOOTERY.  
LAWRENCE & PAT FRANCESCONI,  
175 WILWOOD AVE.,  
RIO DELL, CALIF. BB R

WINSLER'S SHOE STORE.  
3021 MAIN ST.,  
RIVERSIDE, CALIF. BB

GREEN-HEYDEN.  
BUSTER BROWN SHOE STORE.  
923 K ST.,  
SACRAMENTO. 14. CALIF. BB R

GREEN-HEYDEN SHOES.  
COUNTRY CLUB CENTER.  
3416 EL CAMINO AVE.,  
SACRAMENTO, CALIF. BB R

R. D. LINNETT,  
W. A. L. BROWN & SONS.  
320 MAIN ST.,  
SALINAS, CALIF. BB R

HOWE'S SHOES.  
410 E. ST.,  
SAN FRANCISCO, CALIF. 7

GENE'S SHOES.  
716 MAIN ST.,  
CHESWILL, CALIF. 7

## Commission Exhibit 24C

JAMES SHOE STORE  
BANGER, CALIF. BB R  
(A)

A. GOLDBERG.  
DRA KAIN'S SHOE STORE.  
429 W. 6TH ST.,  
SAN PEDRO, CALIF. BB  
(A)

CHAPMAN'S SHOES.  
1336 4TH ST.,  
SAN RAFAEL, CALIF. BB R  
(A) *as mnd shoe*

SEBASTIAN'S SHOES.  
211 W. 4TH ST.,  
SANTA ANA, CALIF. BB R

MATCHETTS BROWNBLT S. S.,  
1341 THIRD ST.,  
SANTA MONICA, CALIF. BB

SMITH'S SHOES.  
2217 FOURTH ST.,  
SANTA ANA, CALIF. 7

STEVENS BOOTERY.  
17230 BAYVIEW.  
VAN NUYS, CALIF. 7



bl 51E]

<p>7 HAROLD'S SHOE STORE. 18 E. STATE ST.. SUNNYVALE, CALIF. B</p> <p>7 SMITH'S SHOE STORE. 590 FARMER'S LANE. MONTGOMERY VILLAGE. SANTA ROSA, CALIF. (A) BB R</p>	<p>7 HOWE'S SHOES. 410 E. ST.. SAN FRANCISCO, CALIF. B</p> <p>7 GORE'S SHOES. 716 MAIN ST.. SUNSHINEVILLE, CALIF. (A) BB R</p>	<p>7 SMITH'S SHOES. 287 FOURTH ST.. SUNNYVALE, CALIF. B</p> <p>7 STEVENS BOOTERY. 17250 RATIOOY. VAN NUYS, CALIF. (A) BB R</p>	<p>7 BUSHNELL'S SHOE STORE. 554 E. MAIN ST.. VENTURA, CALIF. BB R</p>	<p>7 MC QUEEN'S SHOES. GORMAN MC QUEEN. 15584 SEVENTH ST.. VICTORVILLE, CALIF. (A) BB R</p>	<p>7 CASSIDY'S SHOE STORE. 124 S. K ST.. TULARE, CALIF. BB R</p>	<p>7 HANWORTH'S. 142 W. MAIN ST.. TURLOCK, CALIF. BB R</p>	<p>7 CASSIDY'S BROWNELT SHOE STORE. 218 W. MAIN ST.. VISALIA, CALIF. BB R</p>	<p>7 LEE'S SHOES. 1014 W. GARVEY BLVD.. WEST COVINA, CALIF. P.O. COVINA, CALIF. BB R</p>	<p>7 GLENN'S SHOE STORE. 114 N. GREENLEAF. WHITTIER, CALIF. (A) BB R</p>
<p>7 LARN'S SHOE STORE. 155 MAIN ST.. BERKELEY, CALIF. BB R</p> <p><i>address changed</i></p> <p>7 LEON'S SHOES. LEON DORIAN. 1971 HIGH ST.. SELMA, CALIF. BB R</p> <p>(A)</p>	<p>7 FOOTHILL BOOTERY. 7345 FOOTHILL BLVD.. TOJOMGA, CALIF. BB R</p> <p>(A)</p>	<p>7 CASSIDY'S SHOE STORE. 124 S. K ST.. TULARE, CALIF. BB R</p>	<p>7 DAVIS SHOE STORE. RUDER BUILDING. 185 N. STATE ST.. UNION, CALIF. BB R</p> <p>(A)</p>	<p>7 DIER'S SHOES. 241 SECOND AVE.. UPLAND, CALIF. BB R</p>	<p>7 WESLEY'S SHOE STORE. 12159 VENTURA BLVD.. STUDIO CITY, CALIF. BB R</p>	<p>7 GRANDE'S SHOES. PLAZA SHOPPING CENTER. SUNNYVALE, CALIF. BB R</p>	<p>7 VALLEY SHOE CORP.. DBA PHILLIPS BOOTERY. 8120 SAN FERNANDO RD. 868 SUN VALLEY CALIF. (A) BB R</p>		

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## Commission Exhibit 21 T

JOHNSON FAMILY SHOE STORE.  
510 MAIN ST..  
WILLOWS, CALIF. R  
(A) BB R

BURTON'S SHOE STORE.  
510 MAIN ST..  
WOODLAND, CALIF. B R

THORNTON'S SHOES, INC..  
1139 PEARL ST..  
BOULDER, COLO. R  
Y Bg R

RAMSEY'S SHOES.  
1406 N. HANCOCK.  
GOLF CLUB ACRES.  
COLORADO SPRINGS, COLO. R  
(A) BB R

WHITE'S SHOES, P.E. TESTITON, PROP. S  
527 MAIN ST..  
GRAND JUNCTION, COLO. R  
BB

RANDALL'S SHOE STORE.  
QUEELEY, COLO. R  
BB R

MC COT'S SHOES, INC..  
S

## Commission Exhibit 21 I

B & A BOOTERY, NO. 2.  
405 W. NORTHERN AVE..  
PUEBLO, COLO. R  
BB

B & A SHOE STORE.  
520 N. MAIN ST..  
PUEBLO, COLO. R  
BB

ARTIUNK'S YOUTH CENTER, INC. S  
61 CANNON ST..  
BRIDGEPORT, CONN.  
(A) BB R

GUSTAFSON'S SHOE STORE. S  
705 MAIN ST..  
MANCHESTER, CONN.  
(BB) BB

GORDON'S BOOTERY, INC.. S  
936 CHAPEL ST..  
NEW HAVEN, CONN.  
(A) (BB)

GARY-STEVENS.  
150 ORANGE ST..  
NEW HAVEN CONN.  
(A) (BB) R

MR. SAMUEL SCHATZMAN.  
BROAD ST..  
W. BELK'S DISCOUNT PLAZA SHOP. CTR.  
RAINFORIDGE, GA. S

## Commission Exhibit 25 V

PRAGUE SHOE CO., INC.. S  
518 CENTER ST..  
NEW LONDON SHOPPING CENTER.  
NEW LONDON, CONN. R  
(W) (BB) R

SPRAKES BROWN BILT S. S.. S  
518 CENTER ST..  
WALLINGFORD, CONN. R  
(BB)

ETTERER'S SHOE STORE. S  
207 LOCKERMAN ST..  
DOVER, DEL. BB R  
(A)

PILNICK'S SHOE STORE. S  
48 E. MAIN ST..  
NEWARK, DEL. R  
BB

CARL COBIN, INC.. S  
834 MARKET ST..  
WILMINGTON, DELAWARE  
(A) BB

SAM SCHATZMAN SHOE DEPT. NO. 2. 6  
W. BELK SATEY.  
750 BIRD ROAD.  
CORAL GABLES, FLA.

SATER'S SHOE STORE. S  
BROAD ST..  
RAINFORIDGE, GA.

3  
RANDALL'S SHOE STORE,  
GREELEY, COLO.  
BB R

150 ORANGE ST.,  
NEW HAVEN CONN.  
BB (BB) R

W. BELK SAWYER,  
5741 BIRD ROAD,  
CORAL GABLES, FLA.

3  
MC COT'S SHOES, INC.,  
3249 FIRST ST.,  
FT. MYERS, FLA.  
R

SAWYER'S SHOE STORE,  
BROAD ST.,  
SAINSBURGH, GA.  
BB R

3  
UTSEY'S,  
1984 SAN MARCO BLVD.,  
JACKSONVILLE, FLA.  
(A) BB R

3  
UTSEY'S,  
331 HOGAN ST., 216 W 40th St  
JACKSONVILLE, FLA.  
(A) BB R

3  
UTSEY'S,  
5573 ST. JOHNS AVE.,  
JACKSONVILLE, FLA.  
(A) BB R

3  
UTSEY'S,  
W. LEISONS DEPT. STORE,  
770 W. EDGEWOOD,  
JACKSONVILLE, FLA.  
BB R

3  
SNYDER'S SHOE STORE, INC.,  
117 S. KENTUCKY,  
LAKELAND, FLA.  
W BB R

3  
GIBSON CATES SHOE STORE,  
12 W. MAGNOLIA,  
OCALA, FLA.  
(A) BB

3  
KNIGHT & HENDLEY SHOES, INC.,  
W. WILLIAM HENRY'S DEPT. STORE,  
CENTRAL PLAZA SHOPPING CENTER,  
ST. PETERSBURG, FLA.  
(A) BB R

3  
STRICKLANDS BROWNBLT S. S.,  
115 E. COLLEGE ST.,  
TALLAHASSEE, FLA.  
BB R

3  
FARMERS BROWNBLT SHOE STORE,  
315 ZACK ST.,  
TAMPA, FLA.  
BB R

4  
BURGESS' SHOE STORE,  
29 PUBLIC SQUARE,  
CARTERSVILLE, GA.  
(A) BB R

4  
SMITH'S SHOE STORE,  
237 W. HAMILTON ST.,  
DALTON, GA.  
BB

3  
WASON'S,  
MORTON M. FRIEDMAN, PROP.,  
DOUGLAS, GA.  
BB

4  
CLEVELAND SHOES INC.,  
ELBERTON, GA.  
BB R

4  
BUSTER BROWN SHOE STORE,  
123 S. HILL ST.,  
GRIFFIN, GA.  
BB R

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POPLIN'S CENTRAL SHOES.  
1 SOUTH MAIN ST..  
315 BROAD ST..  
MOORE, CAL. BB R

WINKOVITZ SHOE DEPT..  
1 SOUTH MAIN ST..  
CHATTANOOGA, CAL.  
AM BB

WILSON'S.  
DEPT. NO-8.  
1257 OVERLAND.  
DOWLEY, IDAHO BB R

POWELL'S SHOE STORE.  
407 SHERMAN AVE..  
COEUR D'ALENE, IDAHO.  
BB

WILSONS, INC..  
477 PARK AVE..  
IDAHO FALLS, IDAHO.  
BB R

GREASON'S SHOES.  
220 MAIN ST..  
LEWISTON, IDAHO.

WILSON'S, INC..  
165 SOUTH MAIN.  
POCATELLO, IDAHO BB R.

ASHLINER'S SHOE CO..  
MISSOULA, IDAHO BB

HUDSON'S SHOE STORE.  
200-MAIN AVE., S..  
TWIN FALLS, IDAHO. BB R

PAULS BROWNBLT SHOE STORE.  
121 W. THIRD ST..  
ALTON, ILL. BB R

S & M SHOE STORE.  
15 N. BROADWAY.  
ALTON, ILL. BB

WICK'S BUILT-SHOE STORE.  
422 STATE ST..  
ALTON, ILL. BB R

BROWN'S SHOE STORE.  
EAST SIDE SQUARE.  
CARLINVILLE, ILL. BB R

BUTTON'S SHOE STORE.  
CARMI, ILL. BB R

MC COY'S LIDEST SHOES, INC..  
116 S. LOCUST.  
CENTRALIA, ILL. BB R

INTARTS BROWNBLT SHOE STORE.  
603 MONROE ST..  
CHARLESTON, ILL. BB R

DONAT SHOES.  
3945 W. 26TH ST..  
CHICAGO, ILL. BB

GEORGE'S SHOES.  
11317 S. MICHIGAN.  
CHICAGO 28, ILL. BB

SCHOEN'S SHOE STORE.  
614 BROADWAY.

DAVID'S SHOES.  
411 LA SALLE ST..

HOELLEY'S SHOE STORE,  
1936 IRVING PARK RD.,  
CHICAGO 13, ILL. BB R

J. H. KNIPPEN,  
% RUBY'S,  
149 N. YORK,  
ELMHURST, ILL. BB R  
(A)

NIEBUR BROWNBLT SHOE STORE,  
1313 10TH ST.,  
GRANITE CITY, ILL. BB R

POLK SHOE STORE,  
10 E. LOCUST ST.,  
HARRISBURG, ILL. BB

THRASHER'S BROWNBLT S. S.,  
211 E. MAIN ST.,  
HOOPERSTON, ILL. BB R

SMITH'S SMART SHOES,  
LANSHING, ILL. BB R

SCHOENS SHOE STORE,  
614 BROADWAY,  
LINCOLN, ILL. BB R

FRED SMITH SHOES,  
1526 BROADWAY,  
MATTOON, ILL. BB R

SIXON'S SHOE STORE,  
129 BROADWAY,  
MELROSE PARK, ILL. BB

FOXELSON'S BROWNBLT S. S.,  
506-16TH ST.,  
MOLINE, ILL. BB R

MUSGROVE SHOE STORE,  
916 MAIN ST.,  
MOUNT VERNON, ILL. BB

FAMOUS SHOE STORE,  
1302 WALNUT,  
MEMPHISBORO, ILL. BB R

DAVID'S SHOES,  
611 LA SALLE ST.,  
OTTAWA, ILL. BB

MC COY'S LARGEST SHOES, INC.,  
124 N. MAIN ST.,  
PARIS, ILL. BB R

CUSHMAN SHOES,  
112 S. PROSPECT ST.,  
PARK RIDGE, ILL. BB R

S & W SHOE STORE,  
107 W. MADISON ST.,  
PORTLAND, ILL. BB R

MC COY'S SHOES INC.,  
W. SIDE SQ.,  
ROBINSON, ILL. BB R

BASSLER'S SHOES,  
325 LINCOLN HIGHWAY,  
ROCKFORD, ILL. BB R

MC COY'S-ICHEST SHOES, INC., 3  
SALEM, ILL. BB R

MYRTLE BROWN BILT SHOE STORE, 3  
115 E. MAIN ST.,  
SHELBYVILLE, ILL. BB R

DI PLOTTI'S SHOE STORE, 3  
107 W. MAIN,  
TAYLORVILLE, ILL. BB R

WATKINS SHOE STORE, 3  
W. A. MUELLER,  
108 E. WALNUT ST.,  
WATKINS, ILL. BB R

MASTERS SHOE CO., 3  
22 W. GENESEE ST.,  
WADSWORTH, ILL. BB R

KNIPPER'S SHOES, 3  
145 E. MAIN ST.,  
WATKINS, ILL. BB R

NASHUSSEN SHOES, 3  
910 ELM ST.,  
WINNETKA, ILL. BB

B & S SHOES, 3  
1509 I ST.,  
BEDFORD, IND. BB

HAYLICH & MORRISSEY, 3  
211 W. MARKET,  
BLUFFTON, IND. BB R

MILLER'S SHOES, 3  
203 E. MAIN ST.,  
CRANFORDSVILLE, IND. BB R

PARAMOUNT SHOE STORE, 3  
117 W. JOLIET,  
CROWN POINT, IND. BB R

HAYLICH & MORRISSEY S.-B.-S., 4  
122 E. SECOND ST.,  
BLUFFTON, IND. BB R

BEN BECKER EVANSVILLE, INC., 3  
325 MAIN ST.,  
EVANSVILLE, IND. BB R

KATZ'S SHOE STORE, 3  
SOUTHGATE PLAZA,  
FT. WAYNE, IND. BB

KATZ, 3  
1227 E. STATE,  
FT. WAYNE, IND. BB

VILLAGE SHOES, 3  
4343 S. ANTHONY,  
FORT WAYNE, IND. BB

KENT'S SHOES, 3  
5 N. JACKSON ST.,  
FRANKFORT, IND. BB

LAWAN SHOE CO., 3  
122 E. SECOND ST.,  
FRANKLIN, IND. BB R

STEIN'S SHOES, 3  
134-136 E. MARKET,



KNIPPEN'S SHOES.  
145 NORTH GALE ST.,  
PORTLAND, IND. BB

HAPLICH & MORRISSEY B.B.S.S.. 4  
122 N. SECOND ST.,  
DECATUR, IND. BB

B & B SHOES.  
20 E. WASHINGTON,  
GREEN CASTLE, IND. BB

KENNEDY'S SHOE STORE.  
15 N. MAIN,  
LINTON, IND. BB

STEIN'S SHOES.  
134-136 E. MARKET,  
NEW ALBANY, IND. BB

MERRIMAN'S SHOES.  
105 E. MAIN ST.,  
GREENSBURG, IND. BB

COMBS SHOE STORE.  
407 BROADWAY,  
LOGANSPORT, IND. BB

B & B SHOES.  
1332 BROAD ST.,  
NEW CASTLE, IND. BB

DICK'S BOOTERY.  
114 N. BROAD ST.,  
GRIFFITH, IND. BB

B & B SHOES.  
1219 WEST ST.,  
N.W. STATION,  
MADISON, IND. BB

COMBS SHOE STORE.  
122 N. MERIDIAN ST.,  
PORTLAND, IND. BB

BROWN & ROSE SHOES.  
323 N. JEFFERSON,  
HURTINGTON, IND. BB

SCHULTZ BROS.,  
216 E. MAIN ST.,  
MADISON, IND. BB

EVERLY'S SHOE STORE.  
925 MAIN ST.,  
RICHMOND, IND. BB

B & B SHOE CORP.,  
218 N. MAIN ST.,  
KOKOMO, IND. BB

ALEXANDER'S SHOE STORE.  
95 E. WASHINGTON ST.,  
MARTINSVILLE, IND. BB

TAYLOR'S SHOE STORE.  
725 MAIN ST.,  
ROCHESTER, IND. BB

APPLE SHOE STORE.  
107 W. MAIN,  
LEBANON, IND. BB

FALL CITY SHOE CORP.,  
319 PEARL ST.,  
NEW ALBANY, IND.

KENTS BUSTER BROWN S. S.,  
227 N. MAIN ST.,  
RUSHVILLE, IND. BB

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Continued from Folio 58D

B & W SHOE CO., INC.,  
204 W. SECOND ST.,  
SEYMOUR, IND. BB R

HUB SHOE STORE,  
101 S. HARRISON,  
SHELBYVILLE, IND. BB R

KENNEDY'S SHOE STORE,  
SULLIVAN, IND. BB

PARAMOUNT SHOE STORE,  
65 S. FRANKLIN,  
VALPARAISO, IND. BB R

R & H SHOE STORE,  
205 MAIN ST.,  
VINCENNES, IND. BB

WALKER'S SHOE STORE,  
48 W. GARY ST.,  
VINCENNES, IND. BB

COB'S SHOE STORE,  
109 S. MAIN ST.,  
WINCHESTER, IND. BB R

SHULTS BROWN BILT SHOE STORE,  
16 E. STATE ST.,  
ALGONA, IOWA. BB R

ECONOMY SHOE STORE,  
186 MAIN ST.,  
ANAMOSA, IOWA. BB  
(A)

D.B. MILLER CO.,  
W. GRAMMERS,  
208-10 2ND AVE., S.E.,  
CEDAR RAPIDS, IOWA  
(A) BB

BROWN BILT SHOE STORE,  
106 E. SECOND ST.,  
DAVENPORT, IOWA. BB

ESTHERVILLE SHOE STORE,  
ESTHERVILLE, IOWA. BB R

DENNIS'S SHOWN BILT SHOE STORE,  
128 W. THIRD ST.,  
DAVENPORT, IOWA. BB

EITMAN SHOE STORE,  
723 AVENUE G.,  
FT. MADISON, IOWA.  
(A) BB R

STRAND'S SHOE STORE,  
901 MAIN ST.,  
GRINNELL, IOWA.  
(A) BB R

VOLLVAR & PETERSON SHOE STORE,  
824 CENTRAL AVE.,  
HAWARDEN, IOWA. BB

VOLLVAR'S BROWN BILT SHOE STORE,  
18 CENTRAL AVE.,  
LE MAR, IOWA. BB R

BECKER'S SHOE STORE,  
MANCHESTER, IOWA. BB R

BLISSMOP'S SHOE STORE,  
MANCHESTER, IOWA.

WARD'S BOOTERY,  
MANCHESTER, IOWA.

WARE'S SHOE STORE.  
48 W. GAMBEL ST.,  
WALTON, IOWA.

ESTHERVILLE SHOE STORE.  
ESTHERVILLE, IOWA.

WARE'S SHOE STORE.  
48 W. GAMBEL ST.,  
WALTON, IOWA.

WARD'S BOOTERY.  
119 E. MAIN ST.,  
CHAMPE, KANS.

DENNY'S BROOKBILT SHOE STORE.  
128 W. THIRD ST.,  
TAMA, IOWA.

BROWN BILT SHOE STORE.  
W. C. HUTCHINSON,  
225 E. 2ND,  
MUSCATINE, IOWA.

BOB'S SHOES.  
16 S. FREDERICK AVE.,  
OELWEIN, IOWA.

DOUG'S SHOES,  
105 E. BREMER,  
WAVERLY, IOWA.

LLOYD'S GREAT BEND SHOES, INC.,  
1431 MAIN,  
GREAT BEND, KANSAS.

B & N SHOES.  
OHAWA, IOWA.

HALVERSON'S SHOE STORE,  
602 SECOND ST.,  
WEBSTER CITY, IOWA.

O.K. BAKER SHOES.  
1109 MAIN ST.,  
HAYS, KANSAS.

STEWART'S BOOTERY,  
OSKALOOSA, IOWA.

WAGGONER'S,  
113 GRAND,  
W. DES MOINES, IOWA.

HUTCHINSON BOOTERY, INC.,  
19 N. MAIN ST.,  
HUTCHINSON, KANS.

PELLA BOOTERY,  
707 FRANKLIN,  
PELLA, IOWA.

FROELICH'S SHOES,  
227 S. SUMMIT,  
ARKANSAS CITY, KANS.

FROELICH'S SHOE STORE,  
706 N. WASHINGTON,  
JUNCTION CITY, KANS.

STONE SHOE STORE.  
316 GRAND,  
SPENCER, IOWA.

HILLIGOSS SHOES,  
802 COMERCIAL ST.,  
ATCHISON, KANSAS.

BACON SHOE STORE,  
416 DELAWARE ST.,  
LEAVENWORTH, KANSAS.

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MANHATTAN BOOTERY.  
404 POTTS.  
MANHATTAN, KANS.

BB R

LLOYD'S SHOES, INC..  
126 N. MAIN.  
WICHITA 2, KANSAS.

(W) BB R

MAWELLS BROWNELL S. S..  
907 BROADWAY.  
MARYSVILLE, KANS.

(W) BB R

MARSH'S SHOE STORE.  
911 MAIN ST..  
WINFIELD, KANS.

BB R

RICHARDSON'S SHOE STORE.  
212 S. MAIN.  
OTTAWA, KANSAS.

BB R

ADAM'S SHOE STORE.  
228 W. MAIN ST..  
FRANKFORT, KY.

BIB R

RITTER'S SHOE STORE.  
MARY, LA.

BB

DE NEVE SHOE STORE.  
511 N. BROADWAY.  
PITTSBURG, KANS.

BB

QUALITY SHOE STORE.  
756 FRONT ST..  
NATCHITOCHES, LA.

(A) BB

BRUNGARDT'S SHOE STORE.  
309 S. MAIN.  
PRATT, KANSAS

BB R

B & B SHOES.  
5350 SO. THIRD ST., RR. E..  
LOUISVILLE, KY.

BB

MAASE SHOE STORE.  
8119 OAK ST..  
NEW ORLEANS, LA.

(A) BB

SALINA SHOE MART, INC..  
112 S. SANTA FE.  
SALINA, KANSAS

BB R

ADAMS SHOE STORE.  
MAYFIELD, KY.

BB

BRADLEY'S SHOE STORE.  
22 CONGRESS ST..  
BIRMINGHAM, ALA.

BB R



Commission Exhibit 23 / 24

O'CONNOR SHOES.  
213 SO. LAFAYETTE ST..  
GREENVILLE, MICH.  
(A) BB R

SID REIN SHOES.  
20725 MACK AVE..  
GROSSE POINTE WOODS, MICH.  
BB R

JENKINS SHOES.  
6 S. HOWELL.  
HILLSDALE, MICH.  
(A) BB R

MOOR'S SHOES.  
11 E. 8TH ST..  
HOLLAND, MICH. BB

GARTWRIGHT'S.  
COLONIAL VILLAGE.  
1631 W. MT. HOPE.  
LANSING, MICH. BB

VOGEL'S SHOE STORE.  
105 W. LUDINGTON.  
LANSING, MICH.

WELBORN SHOES.  
102 SOUTH MAIN.  
ANDERSON, S. CAR.

## COMMISSION EXHIBIT 24-A

MAHI BROWNBLT SHOE STORE. 4  
508 DONNER AVE..  
MONESSEN, PA. (BB) R

MAHI'S BROWNBLT SHOE STORE. 4  
315 W. MAIN ST..  
MONONGAHELA, PA. (BB) R

JAMES FOLINO. 4  
DBA BUSTER BROWN MT. LEBANON.  
697 WASHINGTON RD..  
MT. LEBANON 28, PA. (A) (BB) R

BISHOP SHOE CO.. 4  
212 BROWNSVILLE RD..  
MT. OLIVER, PA. R

SHUGARTS SHOES. 5  
FRONT & LAUREL.  
PHILIPSBURG, PA. (A) (BB) R

STEELE'S BUSTER BROWN SHOES. 4  
8001 MC KNIGHT RD..  
PITTSBURGH 37, PA. (BB) R

FOYLER'S SHOES.  
117 MILL AVE..  
DYERSBURG, TENN.

Commission Exhibit 24-B

KARL'S SHOE STORE. 5  
PARTALL BLOCK.  
PUNISUTANNET, PA. (A) (BB) R

JONES NOBLEE SHOE DEN. 5  
% WALTER T. JONES STORE.  
717 PENN ST..  
READING, PA. — A

GEORGE'S SHOES. 5  
518 MAIN ST..  
STROUDSBURG, PA. (BB) R

TRITSCHE BROWNBLT SHOE STG. & L. 4  
406 CORBET ST..  
TARENTUM, PA. (BB) R

DUTREY'S SHOES. 4  
71 W. MAIN.  
ARCADE BLDG..  
WAYNESBORO, PA. (A) (BB)

TRITSCHE BROWNBLT SHOE STORE. 4  
740 PENN AVE..  
WILKINSBURG, PA. (BB) R

HARRISON'S BOOTERY. 4  
206 CENTER ST..  
MORGANTHAU, PA.



4	STEELE'S BUSTER BROWN SHOES. 8001 MC KNIGHT RD., PITTSBURGH 27, PA.	4	TRITCHES BROWN BUILT SHOE STOKES. 740 PENN AVE., PA. WILKESBURG, PA.
4	WELBORN SHOES. 102 SOUTH MAIN. ANDERSON, S. CAR.	3	HARRISON'S BOOTERY. 206 CENTER ST., KINGSPORT, TENN.
4	JUEL'S SHOE STORE, INC., DBA JUEL'S SHOES, 413 MAIN. (A) BB	4	NETTIE LEE'S BOY & GIRL SHOP, 229 BROAD ST., SHOE DEPT., KINGSPORT, TENN.
4	BROOKINGS, S. DAK. (A) BB	3	KIRKPATRICK BROWN BUILT S. S., LEBANON, TENN.
4	BANKER'S BOOTERY, MOURIDGE, S. DAK. (A) B13	3	FAMILY SHOE STORE, J. L. FRIZZELL, LEXINGTON, TENN.
4	RANDALLS, INC., 704 ST. JOE, RAPID CITY, S. DAK. (A) BB R	4	WILSONS BROWN BUILT SHOE STORE, MC MINNIVILLE, TENN.
4	HOGANS BROWN BUILT SHOE STORE, 107 W. 3RD ST., YANKTON, S. DAK. (A) BB R	4	LOWRY'S SHOES, 3996 PARK AVE., MEMPHIS, TENN.
4	SMITH'S SHOES, 107 W. 7TH ST., COLUMBIA, TENN.	4	HOLVES SHOE DEPT., % DOSSER'S, JOHNSON CITY, TENN.
4	FOXLEH'S SHOES, 117 MILL AVE., DYERSBURG, TENN.	4	HARRISON'S BROWN BUILT S. S., ELIZABETHTON, TENN.
4	HOLMES BROWN BUILT SHOE STORE, 106 DEPOT ST., GREENEVILLE, TENN.	4	BURNETT'S SHOE STORE, 213 E. LAFAYETTE ST., JACKSON, TENN.
4	J. W. HARRISON JR. - SPECIAL, 204-06 E. MAIN, JOHNSON CITY, TENN.	4	HOLVES SHOE DEPT., % DOSSER'S, JOHNSON CITY, TENN.
4	SMITH'S SHOES, 107 W. 7TH ST., COLUMBIA, TENN.	4	LOWRY'S SHOES, 3996 PARK AVE., MEMPHIS, TENN.

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<p>3 RUBENSTEIN FOOTWEAR, INC., SUMMER SHOPPING CENTER, 4276 SUMMER AVE., MEMPHIS, TENN. (A) BB</p>	<p>1 WELLS BOOTERY, 726 SO. MAIN, SPRINGFIELD, TENN. - R</p>	<p>5 ELLY'S SHOES, 1008 S. E. ELIZABETH ST., BROWNSVILLE, TEXAS BB</p>
<p>3 THREADGILL'S SHOE STORE, 152 MAIN ST., MILAN, TENN. (A) BB</p>	<p>4 CLAYTON &amp; CO., TULLAHOMA, TENN. (A) BB R</p>	<p>4 HOLLIDAY &amp; ANDERSON, 102 S. MAIN ST., CLEBURNE, TEXAS. BB R</p>
<p>4 R. L. HOLMES BROWNSHIRT SHOE STN 127 MAIN ST., MORRISTOWN, TENN. BB R</p>	<p>3 BURNETT'S SHOE STORE, 217 S. FIRST ST., UNION CITY, TENN. BB R</p>	<p>4 COOPER'S SPUSLOCK SHOES, 214 N. BEATON ST., COMANCIA, TEXAS. BB R</p>
<p>3 BROTH'S SHOES, MURFREESBORO, TENN. BB R</p>	<p>5 KENTON'S SHOES, 818 POLK AVE., AMARILLO, TEXAS. JOHN KENTON, BB R</p>	<p>4 BUSTER BOYD JUVENILE S. S., 1709A ELM ST., DALLAS, I., TEXAS. BB</p>
<p>4 BURNETT'S SHOE STORE, 100 E. WASHINGTON, PARIS, TENN. BB R</p>	<p>5 KENTON'S SHOES NO. 2, 3512 E. 11TH ST., AMARILLO, TEXAS. JOHN KENTON BB R</p>	<p>4 STONES SHOE STORE, 3515 LOVERS LANE, DALLAS, TEXAS BB</p>
<p>4 WALKER'S SHOES, COLUMBIAVILLE, TENN.</p>	<p>5 BUCKLEY'S SHOE STORE, 510 N. MAIN ST., HONGER, TEXAS.</p>	<p>4 STONE'S SHOE STORE, 114 W. OAK ST., DARTON, TEXAS.</p>
<p>4 POTERS' SHOE STORE, 107 N. MAIN ST., EMIS, TEXAS.</p>	<p>5 ADAMS SHOE STORE, 304 GRAY ST., KILLEN, TEXAS.</p>	<p>5 GRISHAM'S SHOES, 6926 SAN PEDRO, SAN ANTONIO, TEXAS</p>

WAL'S SHOES. SMELTVILLE, TENN. BB R	4	ROGERS' SHOE STORE, 107 N. MAIN ST., ENNIS, TEXAS. BB -	4	ADAMS SHOE STORE, 306 GRAY ST., KILLEEN, TEXAS. (A) BB R	5	BUCKLEY'S SHOE STORE, 510 N. MAIN ST., ROGER, TEXAS.	5	STONE'S SHOE STORE, 114 W. OAK ST., DENTON, TEXAS.	4
POSTERS SHOE STORE, GILMER, TEXAS. BB R	4	SILVER'S SHOE STORE, 125 E. TYLER AVE., LONGVIEW, TEXAS. (A) BB	4	SILVER'S SHOE STORE, 125 E. TYLER AVE., LONGVIEW, TEXAS. (A) BB	4	CHISN'S SHOES, 9926 SAN PEDRO, SAN ANTONIO, TEXAS BB	5	CHISN'S SHOES, 9926 SAN PEDRO, SAN ANTONIO, TEXAS BB	5
CANYER SHOE STORE, 505 W. 4TH ST., GRANAH, TEXAS (A) BB R	4	ELWYN'S SHOES, 22 S. MAIN ST., MC ALLEN, TEXAS. BB	5	ELWYN'S SHOES, 22 S. MAIN ST., MC ALLEN, TEXAS. BB	5	COLEMAN SHOE STORE, 123 N. TRAVIS, SHERMAN, TEXAS (A) BB R	4	COLEMAN SHOE STORE, 123 N. TRAVIS, SHERMAN, TEXAS (A) BB R	4
STEPHENSON'S SHOES, 2719 LEE ST., GREENVILLE, TEXAS. BB R	4	VILSON'S SHOE STORE, 103 N. KENTUCKY ST., MCKINNEY, TEXAS. BB R	4	VILSON'S SHOE STORE, 103 N. KENTUCKY ST., MCKINNEY, TEXAS. BB R	4	B.J. STEELE, STEELE'S FAMOUS SHOE STORE, 105 W-SIDE PLAZA, SULPHUR SPRINGS, TEXAS. (A) BB R	4	B.J. STEELE, STEELE'S FAMOUS SHOE STORE, 105 W-SIDE PLAZA, SULPHUR SPRINGS, TEXAS. (A) BB R	4
ELWYN'S SHOES, 109 E. JACKSON, MARLINGEN, TEXAS (A) BB	5	FAMOUS SHOE STORE, 9 EAST SIDE PLAZA, PARIS, TEXAS. BB R	4	FAMOUS SHOE STORE, 9 EAST SIDE PLAZA, PARIS, TEXAS. BB R	4	ROGERS SHOE STORE, 15 W. CENTRAL AVE., TEMPLE, TEXAS. BB	5	ROGERS SHOE STORE, 15 W. CENTRAL AVE., TEMPLE, TEXAS. BB	5
ROGERS SHOE STORE, HUNTSVILLE, TEXAS. BB	5	CHISN'S SHOE STORE, SUNSET RIDGE SHOPPING CENTER, 6426 N. NEW BRAUNFELS AVE., SAN ANTONIO, TEXAS. (A) BB	5	CHISN'S SHOE STORE, SUNSET RIDGE SHOPPING CENTER, 6426 N. NEW BRAUNFELS AVE., SAN ANTONIO, TEXAS. (A) BB	5	LATIMER'S SHOE STORE, 306 W. BROAD ST., TEXARKANA, TEXAS (A) BB	4	LATIMER'S SHOE STORE, 306 W. BROAD ST., TEXARKANA, TEXAS (A) BB	4

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OLVSTEAD SHOE STORE.  
180 NORTH COLLEGE.  
TYLER, TEXAS

(A) BB

COLEMAN'S SHOES.  
1710 PEARSE ST..  
VERNON, TEXAS.

BB R

WASH SHOE CO..  
W. FARLEY'S ON NINTH.  
1918 9TH ST..  
WICHITA FALLS, TEXAS

(A) BB R

RANDALLS.  
134 W. CENTER ST..  
PROTO, UTAH.

BB R

DRAGON'S SHOE STORE.  
113 SOUTH ST..  
BENNINGTON, VERMONT.

BB

MAYMAN'S SHOE STORE.  
206 KING ST..  
ALEXANDRIA, VA.

BB

JENSEN'S SHOES.  
FLOWER HILL SHOPPING CENTER.  
OTHELLO, WASH.

ALMA SHOP.  
106 E. BROAD ST..  
FALLS CHURCH, VA.

(A) BB R

MC COLLUM-FARRELL SHOE STORE. 4  
MARTINSVILLE, VA.

BB R

KETTMAN'S SHOE STORE.  
244 E. MAIN.  
AUBURN, WASH.

(A) BB

SPENDER-PANCOAST SHOES.  
109 WEST HOLLY.  
BELLINGHAM, WASH.

BB R

SPELLMAN AND PEASE.  
204 SPELLMAN'S.  
200 PACIFIC.  
BREMERTON, WASH.

(A) BB R

GLEN FREEMAN SHOES.  
115 N. TOWER AVE..  
CENTRALIA, WASH.

BOUTHER'S SHOE STORE.  
169 S. MAIN ST..  
COLVILLE, WASH.

BB R

MANGE'S BUSTER BROWN S. S.. 7  
413 N. PEARL ST..  
ELLENSBURG, WASH.

BB R

GISH SHOE STORE.  
2803 COLBY AVE..  
EVERETT, WASH.

BB R

WARN & WARN INC..  
DBA DAVIDS SHOES.  
201 W. KENNEWICK.  
KENNEWICK, WASH.

(A) BB R

ZIMMERMAN'S.  
132B CONNORCE AVE..  
LONGVIEW, WASH.

BB R

GISH'S BUSTER BROWN SHOE STORE.  
308 FIRST ST..  
MT. VERNON, WASH.

WILTON'S SHOE STORE.  
816 E. YAKIMA AVE..  
YAKIMA, WASH.

JEWENS SHOES.  
 FLOWER HILL SHOPPING CENTER.  
 OTHELLO, WASH. (A) BB R  
 7

RODMAN'S SHOE STORE.  
 1205 MEADE AVE..  
 PROSSER, WASH. BB R  
 7

SPELLMAN & PEASE.  
 301 SO. MERIDIAN ST..  
 PUYALLUP, WASH. (A) B13 R  
 7

SPELLMAN & PEASE.  
 5439 S. TACOMA WAY.  
 TACOMA, W. WASH. BB R  
 7

SPELLMAN & PEASE.  
 1122 BROADWAY.  
 TACOMA, S. WASH. BB R  
 7

WILTON'S SHOE STORE.  
 216 E. YAKIMA AVE..  
 YAKIMA, WASH. BB R  
 7

MARTIN'S BOOTERIE.  
 227 W. MAIN ST..  
 CLARKSBURG, W. VA. (A) BB  
 4

MARTIN'S BOOTERIE.  
 114 ADAMS ST..  
 FAIRMONT, W. VA. (A) BB  
 4

DAVID'S SHOES.  
 1323 GEORGE WASHINGTON WAY.  
 RICHLAND, WASH. BB R  
 (A) 7

BLYNN'S SHOE STORE.  
 3082 MAIN ST..  
 WEIRTON, W. VA. (A) BB R.  
 4

DAHL SHOES & SERVICE.  
 12545 BOTHELL WAY.  
 SEATTLE, WASHINGTON. BB R  
 7

W & W, INC..  
 % RUSAN'S.  
 512 W. RIVERSIDE AVE  
 SPokane, WASH. (A)  
 7

WILTON-MICHELS.  
 3 E. MAIN ST..  
 WALLA WALLA, WASH. BB R  
 7

TROSPERS BUSTER BROWN S. S..  
 21 WENATCHEE AVE..  
 WENATCHEE, WASH. BB R  
 7

L. W. BREITENBACH SHOE DEPT..  
 % GEIERS.  
 APPLETON, WISC. (A) BB  
 4

GLEN FREEMAN SHOES.  
 115 N. TOWER AVE..  
 CENTRALIA, WASH.  
 7

GISH'S HUSTER BROAD SHOE STORE.  
 308 FIRST ST..  
 MT. VERNON, WASH.  
 7

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Commonwealth of Massachusetts

COMMONWEALTH OF MASSACHUSETTS

120 F. COLLEGE,  
APPLETON, WISC.

(A) BB

REEDS SHOE STORE,  
320 MAIN ST.,  
MENOMONIE, WISC.

BB

R

KELLEY'S SHOES,  
708 BIG NORM.  
WOLLAND, WYO.

(A) BB

R

MOE'S SHOE STORE,  
19 MAIN ST.,  
BLACK RIVER FALLS, WISC.

R

LINDMAN'S BROWN BILT S. S.,  
3529 W. NORTH AVE.,  
MILWAUKEE, S. WISC.

BB

BEAVER HONTERY,  
127 FRONT ST.,  
BEAVER DAM, WISC.

BB

KERR'S SHOES,  
1020 17TH AVE.,  
MONROE, WISC.

(A) BB

MC DONALD'S SHOE STORE,  
318 STATE ST.,  
BELOIT, WISC.

BB

R

THIRD AVE., SHOE SHOP,  
PROPSOM & PEICHEL, PROPS.,  
44 N. 3RD AVE.,  
STURGEON BAY, WISC.

BB

THE WHITE STORE,  
606 BROADWAY,  
GREEN BAY, WISC.

BB

MCNEIL BROWN BILT SHOES,  
911 S. EIGHTH ST.,  
MANITOWOC, WISC.

BB

GREYHULL SHOE STORE,  
609 GREYHULL AVE.,  
GREYHULL, WISC.

R

BURNHART'S SHOE STORE,  
115 E. MAIN ST.,  
MIDLAND, MICH.DOE A. WALSH SHOES,  
WILKES & HILDEBRAND,  
351-355 STATE ST.,HOFFETTS SHOE STORE,  
116 W. MICHIGAN AVE.



911 S. EIGHTH ST.. MANITOWOC, WISC. BB	GREYBULL SHOE STORE. 509 GREYBULL AVE.. GREYBULL, WYOMING BB	WOPFETTS SHOE STORE. 116 W. MICHIGAN AVE.. YPSILANTI, MICH. BB R	
BURNHART'S SHOE STORE. 118 E. MAIN ST.. MIDLAND, MICH. BB R	DON A. WALSH SHOES. % RINES & HILDEBRAND. 381-383 STATE ST.. ST. JOSEPH, MICH. BB R	BISQUARD SHOE STORE. 343 S. BROADWAY, ALBERT LEA, MINN. BB	
CARTWRIGHT SHOE STORE. 188 E. BROADWAY, ST. PLEASANT, MICH. (A) BB	RAYMOND SHOE CO.. % WISCHMANN'S. BAGINAW, MICH. BB R	AUSTIN SOOTERY, INC.. 404 N. MAIN ST.. AUSTIN, MINN. (Note at 2:15) BB R	
HAINSTOCK'S. BROWNHILT SHOE STORE. 111 N. 2ND ST.. MILES, MICH. BB R	WILLERS BROWNHILT SHOE STORE. STURGIS, MICH. BB R	LARSON'S SHOE STORE. 311 THIRD ST.. BEMIDJI, MINN. BB R	
ROBERT SHOE CO.. % D. M. CHRISTIAN DEPT. STORE. OSAGO, MICH. - R	KRONBACH SHOE CO.. 2664 W. JEFFERSON. TRENTON, MICH. (A) BB	PAUL'S SHOE STORE. 611 LAUREL. BRAINERD, MINN. BB	
FISHER'S SHOE STORE. 240 SO. MAIN. PLYMOUTH, MICH. (A) BB R	CAMPBELL SHOE STORE. 1138 E. WEST MAPLE RD.. WALLED LAKE, MICH. BB R	ARNESSEN'S SHOE STORE. 911 CLOQUET AVE.. CLOQUET, MINN. BB	
HARRISON'S SHOES, INC.. 508 S. WASHINGTON AVE.. ROYAL OAK, MICH. BB R	FISHER'S SHOES. 3611 S. WAYNE. WAYNE, MICH. (A) BB		

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GISIN'S SHOE STORE,  
8 E. SUPERIOR ST.,  
DULUTH 2, MINN.  
BB

WARREN SHOE CO.,  
% MARVIN ORECK'S,  
268 SOUTHDALE,  
EDINA 10, MINN.  
(A) BB R

BUNKHARTZMEYER SHOES,  
220 CENTRAL AVE.,  
FARIBAULT, MINN.  
(A) BB R

DAILEY SHOE STORE,  
123 W. LINCOLN,  
FERGUS FALLS, MINN.  
BB

STENBOG'S SHOE STORE,  
GRAND RAPIDS, MINN.  
BB

VICTOR CLOTHING CO.,  
LITTLE FALLS, MINN.  
BB

BOWAR'S, INC.,  
430 E. CAPITAL ST.

CARL E. ELVQUIST SHOES INC.,  
1941 E. LAKE,  
MINNEAPOLIS 7, MINN.  
(A) BB

FRISHOLM SHOE STORE,  
117 N. FIRST ST.,  
MONTEVIDEO, MINN.  
(A) BB R

STONE'S SHOE STORE,  
26 N. MINNESOTA,  
NEW ULM, MINN.  
BB R

O & B SHOE STORE,  
217 S. BROADWAY,  
ROCHESTER, MINN.  
BB R

CHRISTENSEN BROWNBLT S. S.,  
492 SNELLING AVE., N.,  
ST. PAUL, 4, MINN.  
BB R

GILMORE SHOES,  
E-S N. MAIN ST.,  
AMORY, MISS.  
(A) BB

BAKER LEZZER SHOE STORE,

GRYDER'S SHOES,  
217 W. HOWARD ST.,  
SILOXI, MISS.  
BB R

COLUMBUS HPOUMBLT SHOE STORE,  
S. FIFTH ST.,  
COLUMBUS, MISS.  
BB R

MESSERS BROWNBLT S. S.,  
607 CRUISE ST.,  
CORINTH, MISS.  
BB

GRYDER SHOE STORE,  
200 25TH AVE.,  
GULFPORT, MISS.  
(A) BB R

BOWAR'S INC.,  
P. O. BOX 9616, STATION D,  
JACKSON, MISS.  
BB R

BOWAR'S INC.,  
MEADOWBROOK MART.,  
JACKSON, MISS.  
BB

CLARK & HALL'S SHOE STORE,

BOYAR'S, INC., 430 E. CAPITAL ST., JACKSON 1. MISS. BB R	4	EAKER LENZER SHOE STORE, 126-128 EAST 4TH ST., CARTHAGE, MO. BB	4	CLARK & HALL'S SHOE STORE, 316 W. REED ST., MOBERLY, MO. (A) BB R	2
BOYAR'S INC., WART 51, 1700 TERRY ROAD, JACKSON 3. MISS. BB R	4	WELLS SHOE STORE, TINY TOT SHOE SERVICE, INC., 48 S. FLORISSANT RD., FERGUSON 21. MO. (A) BB	4	RAINEY SHOE CO., 618 FRANCIS ST., ST. JOSEPH, 8. MO. BB R	3
KLEBAN SHOES, KOSCIUSKO, MISS. (A) — R	4	STOLL'S SHOE STORE 111 MAIN ST., PESTUS. MO. BB (A)	4	B & B SHOE CO., 228 S. OHIO ST., SEDALIA, MO. BB R	3
LISBY'S SHOES, LOUISVILLE, MISS. BB R	4	EGAN CO. INC., 210-211 W. MAIN ST., FLAT RIVER, MO. BB	4	B & B SHOE CO., 301 COLLEGE ST., SPRINGFIELD, MO. BB R	3
VESTS SHOE STORE, 237 MAIN ST., MCGOWEN, MISS. BB R	4	RAY WILSON SHOES, 11144 BLUE RIDGE, HICKMAN MILLS, MO. (A) BB R	4	JUNIOR BOOT SHOP, 1940 S. GLENSTONE, SPRINGFIELD, MO. (A) — R	3
REED SHOE DEPT., INC., 94 R. W. REED CO., TUPELO, MISS. BB	4	SMITH SHOE STORE, EARL W. & LOUISE W. SMITH, 221 N. KIRKWOOD RD., KIRKWOOD 22. MO. (A) BB R	4	THURMOND'S SHOE STORE, 102 WEST LOCKWOOD, WEBSTER GROVES, MO. BB R	3

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Continued Exhibit 2124

M. & K. SHOES.  
LEASTON, MONT.  
(A) BB

MORAND'S SHOE STORE,  
420 BOX BUTTE.  
ALLIANCE, NEBR.  
BB R

BAUEN'S SHOE STORE,  
113 N. 6TH ST..  
BEATRICE, NEBR.  
(A) , BB R

HUGH'S SHOE STORE,  
BELLEVUE, NEBR.  
(W) BB R

HARRIS SHOES.  
BLAIR, NEBRASKA.  
R

WAYNE'S SHOE STORE,  
ST. PAUL, MINN.

Continued Exhibit 2125

WILSON & PELLEY SHOE STORE,  
530 N. MAIN.  
FARMORT, NEBR. BB R

KON'S BOOTERIE,  
706 W. 2ND.  
HASTINGS, NEBR.  
(A) BB

LLOYD SHOES.  
8711 COUNTRYSIDE VILLAGE.  
OMAHA 6, NEBR.  
(A) BB

B & W SHOES,  
PLATTSOUTH, NEBRASKA. R  
B13

ROSELAND BUSTER BROWN SHOES.  
4934 30.24TH ST..  
SOUTH OMAHA, NEBR.  
(A) BB

FOLK & CAMPBELL BUILT. S. S. 7  
ST. W. 2ND ST.

THOMAS & DYER BUILT. S. S. 5  
69 MAIN ST.

Continued Exhibit 2126

THORNE SHOE CO..  
94 N. MAIN ST..  
CONCORD, N. HAMPS.  
(A) (BB) R

WHITE'S SHOE STORE,  
LANCASTER, N. HAMPS.  
(BB)

CARLETON BROWN BILT S. S..  
MAIN ST..  
LITTLETON, N. HAMPS.  
(BB) R

CRANFORD BOOTERY,  
23 NORTH UNION AVE..  
CRANFORD, N. J.  
(A) (BB) R

B & H SHOE SHOP.  
200 MAIN ST..  
HACKENSACK, N. J.  
(BB) +

BABGOLD SHOES.  
302 N. WOOD AVE..  
LINDEN, N. J.

WILAND E. SHADDOCK.

CLIVAX SALES CORP..  
DBA BUSTER BROWN ESSEX GREEN.

WAYNE'S SHOE STORE. C. WAYNE HOFFMAN 5	FOLK & CAMPBELL BUILT. S. S. 7 51 W. 5TH ST. 5	302 N. WOOD AVE.. LESTER, N. Y. 5
CLIVAX SALES CORP.. DBA BUSTER BROWN ESSEX GREEN. ESSEX GREEN SHOPPING CENTER. WEST ORANGE, N.J. R (A) (BB)	THOMAS & DYER BUILT. S. S. 5 99 MAIN ST.. BATAVIA, N. Y. R (BB)	MILAND E. SHADDOCK.. SHADDOCK'S SHOE STORE. 178 MAIN ST.. CAMANDAQUA, N. Y. R (BB)
THE SHOE MART. DRIUGHT HOUSE, PROP.. 928 NEW YORK AVE.. ALAMOGORDO, N. MEX. R (A) BB	BUSTER BROWN FORDHAM. B & M MERCHANDISE, INC.. 2395 GRAND CONCOURSE. BROOK. NEW YORK 53. N. Y. R (BB)	OLDS & FULMER. 42 MAIN ST.. CORTLAND, N. Y. R (BB)
ROUSE'S SHOES. 311 W. MAIN ST.. FARMINGTON, N. MEX. (A) BB	BUSTER BROWN-BIVOSH LUNAW. 1615 KINGSHIGHWAY. BROOKLYN 29. N. Y. R (BB)	WEINBERGENS SHOE STORE. 121 CANAL ST.. ELLENVILLE, N. Y. R (BB)
LESTER'S SHOES. 311 W. MAIN. ROSNELL, N. MEX. (A) BB	BUSTER BROWN SHOE SALON. 1554 PITKIN AVE.. BROOKLYN 13. N. Y. R (BB)	KEN'S SHOES. 106 WASHINGTON. ENDICOTT, N. Y. R (BB)
SOCORRO BROWN BUILT S. S.. SOCORRO, N. MEX. BB R	BUSTER BROWN SHOE SALON. 4616 13TH AVE.. BROOKLYN 19. N. Y. R (BB)	BUSTER BROWN SHOES. IN BOB & BEITY'S INC.. 1036 BEACH 20TH ST.. FAR ROCKAWAY, N. Y. R (BB)
HOLAN'S SHOE STORE. 55 GENESEE ST.. AMHERST, N. Y. R (BB)	HENTEL BROWN BUILT SHOE STORE. 5 1323 HENTEL AVE.. BUFFALO, 16. N. Y. R (BB)	B & B FRESH HEADERS. 61-16 168TH ST.. FLUSHING, L. I. N. Y. R (BB)

JERRY'S BUSTER BROWN SHOES. 3  
68-36 MAIN ST.,  
NEW GARDEN HILLS,  
FLUSHING L.I., N.Y. WM.-N. MECHANIK.  
W 7/4-00 *W 7/4-00* R

ARMES BROADBILT SHOE STORE, 3  
1 MAIN ST.,  
ROSWANDA, N. Y. (BB) R

BROWN BILT SIDE STONE.  
15 E. THIRD ST.,  
JAMESTOWN, N. Y.  
(98) R 3

F & K SHOES INC.:  
DBA FRANKLIN SHOE SHOP,  
936 HEMPSTEAD TURNPIKE,  
FRANKLIN SQUARE, N.Y.  
(38)

EMERLING'S.  
15-17 MAIN ST.,  
HAMBURG, N.Y.  
(A) (OB) R

ROWES BROS. BUILT SHOE STOUT. 5  
34 JOHN ST. R  
KINGSTON. N. Y. (1851)

EUSTER BROWN FOREST HILLS. 5  
63-73 108TH ST.,  
FOREST HILLS 75, N.Y. (20) R

BUSTER BROWN MID ISLAND. 3  
MAX KOSSOVE, JR..  
519 MID ISLAND SHOPPING PLAZA.  
HICKSVILLE L.I.N.Y. (K) (BB) R

DELSON BOOTERY,  
1891 PALMER AVE.,  
LARCHMONT, N.Y.  
(A) (CB)

EUSTON BROWN ROOSEVELT FIELD, 5  
 ROOSEVELT FIELD SHOP, CENTER,  
 GARDEN CITY L.I., N.Y.  
 (A). (GB) R

VAN'S SHOES,  
120 E. STATE ST.,  
ITHACA, N. Y.  
(66)

GREEN'S DEPT. STORE.  
90 NORTH ST.,  
MIDDLETOWN, N.Y.  
(A) (LB)

JAX SHOES.  
856-11 UNION TURNPIKE.  
GLENN OAKS, N.Y. R (98)

WALBEN SHOES, INC.,  
37-20 82ND ST.,  
JACKSON HEIGHTS, L.I.N.Y.

FOGARTY BROADBILT S. S. S. 5  
158 BROADWAY.  
NEWBURGH, N. Y. R (LB)

CARBONE SHOE STORE,  
47 E. MAIN ST.,  
GOVERNORS, N.Y. 2

RICHAL SHOE CORP.,  
BUSTER BROWN-JAMAICA,  
89-55A 164TH ST.,  
JAMAICA, L.I., N.Y.

BUSTER JOSEPH DYCKMAN ST. 370 E.  
LEONARD KAISER.  
162 DYCKMAN ST.. R  
NEW YORK, N. Y.

HUB BUSTEN BKOAN BOOTENY, 5

ONEIDA SHOE CO., INC.,  
CAROLALO'S TOWN SHOES,

RECHWANKER'S SHOE STORE.



CARBONE SHOE STORE.  
47 E. MAIN ST..  
ROCHESTER, N. Y. R

HUB DUSTEN BROWN BOOTERY.  
201 THIRD AVE..  
NEW YORK, N. Y. (BB) R

TICKNOR SHOES, INC..  
332 FIRST AVE..  
NEW YORK CITY 9, N. Y. R (BB)

TABER & BRUNBURGH.  
104 FALLS ST..  
NIAGARA FALLS, N. Y. (BB) R

ONEIDA SHOE CO., INC..  
GAROPALO'S TONKHOES.  
132 MAIN ST..  
ONEIDA, N. Y. (BB) R

EDWALL SHOE CO., INC..  
1573 UNIONPORT RD..  
PARKCHESTER, BRONX, N. Y. (BB) R

BUSTER BROWN REGO PARK.  
94-03 63RD DR..  
REGO PARK, NEW YORK, N. Y. (A) (BB) R

ROYAL SHOES.  
801 RICHMAN, PROP..  
120-05 LIBERTY AVE..  
RICHMOND HILL, QUEENS, N. Y. (BB) R

BAREIS SHOE STORE.  
826 JOSEPH AVE..  
ROCHESTER 5, N. Y. (BB) R

MILLIA'S SHOE STORE.  
128 FORD ST..  
ODGENSBURG, N. Y. (BB) R

BRADY'S BROOKHILL SHOE DEPT..  
ATTN. MR. J. W. BUTLER.  
OLEAN, N. Y. (BB) R

SCHWANK'S SHOE STORE.  
1494-96 DEWEY AVE..  
ROCHESTER, N. Y. R (BB)

TOWNSEND'S SHOE STORE.  
175 W. DOMINICK.  
ROUS, N. Y. (BB) R

ROSE'S BROADBILT SHOE STORE.  
430 BROADWAY.  
SARATOGA SPRINGS, N. Y. (BB) R

NOLAN'S SHOE STORE.  
SENECA FALLS, N. Y. (BB) R

LAZAR'S SHOE STORE.  
81-83 NANAHOECK AVE..  
WHITE PLAINS, N. Y. (A) (BB) R

CULVER SHOES.  
1102 CULVER RD..  
ROCHESTER, 9, N. Y. (BB) R

Not a shoe store

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Name	County and Federal Index	County and Federal Index	
POTELL'S SHOES. 101 WEST MAIN ST.. CLINTON, N. CAR. BB R	5 ALEXANDER'S SHOES. 519 WHEELING. CAMBRIDGE, OHIO. (A) BB	4 FARRAR'S SHOES. 121 S. MAIN ST.. CLYDE, OHIO. (A) BB R	
STAVLEY'S SHOES, INC. FRIENDLY SHOPPING CENTER. GREENSBORO, N. CAR. BB	4 CLARENCE FAFLIK SHOES, INC. NO. 3. % PARKATON SHOPPING CENTER. 7571 RIDGEWOOD DRIVE. CLEVELAND, OHIO BB -	4 J. O. MOORE. % MILLER-JONES CO.. 49 E. CUYTON ST.. COLUMBUS, 16, OHIO. BB PERSONAL	
PETERSON'S SHOES. 107 S. MAIN ST.. LENOIR, N. CAR. (A) BB R	4 CLARENCE FAFLIK SHOE STORE. 20201 VAN AIKEN RD.. CLEVELAND, OHIO BB -	4 ANDREW HAUER. % STYLE CENTER. 368 BROAD ST.. ELYRIA, OHIO (A) BB	
LEE'S SHOES. MONROE, N. CAR. BB R	4 CLARENCE FAFLIK SHOE STORE. 4256 PEARL RD.. CLEVELAND, OHIO (A) BB -	3 CLEAR'S SHOE STORE. 515 S. BROADWAY. GREENVILLE, OHIO (A) BB R	
LONG'S FAMILY SHOE STORE. 119 W. BROAD ST.. STATESVILLE, N. CAR. (A) BB	4 CLARENCE FAFLIK SHOE STORE. 9711 LORAIN. CLEVELAND, OHIO (A) BB -	4 CLARENCE FAFLIK SHOES. SOUTHGATE SHOPPING CENTER. 21642 LIBBY RD.. MAPLE "ELITE", OHIO A BB -	
STEVEN'S SHOES. VALLEY CITY, N. DAK. BB R	3 FOX'S SHOE STORE. 16719 KINSMAN ROAD. CLEVELAND, SO. OHIO. BB R	4 BENLEY, INC.. % BORMAN'S. 408 PUTMAN RD.. CLEVELAND, OHIO BB	
SMATT & WADDELL, INC.. DBA JOFFE'S SHOES.	4 THE SHANK SHOE CO.. 109 N. OHIO ST.. BB	4 DUTCHER'S SHOE STORE.	4 4

205 PUTMAN RD.,  
CARIETTA, OHIO.

3 copies, 1001, 1002, 1003, 1004

DUTCHER'S SHOE STORE.

ALTUS, OKLA.

BB

205 PUTMAN RD.,  
CARIETTA, OHIO.

3 copies, 1001, 1002, 1003, 1004

THE SHANK SHOE CO.,

109 N. OHIO ST.,

SIDNEY, OHIO.

BB R

205 PUTMAN RD.,  
CARIETTA, OHIO.

3 copies, 1001, 1002, 1003, 1004

SMART & MADWELL, INC.,

DBA JOFFE'S SHOES,

19 S. MAIN ST.,

MIAMI, OHIO

BB R

BARTEL'S SHOES.

1214 CENTRAL AVE.,

MIDDLETOWN, OHIO.

(A) BB R

CLAREY F. FAFLIK SHOES, INC., 4

2624 1/2 GREAT NORTHERN SHOP. CTR.,

M. OLMSTED, OHIO NO. 7

(A) BB -

DOUGLASS SHOES.

26 E. HIGH ST.,

OXFORD, OHIO

(A) BB R

CLEAR'S SHOES.

144 E. SPRING,

ST. MARYS, OHIO.

BB R

CARLYLE'S SHOES.

171 E. MARKET ST.,

SANDUSKY, OHIO.

BB R

MASTER SHOE STORE.

448 YO POLAND RD.,

STRUTHERS, OHIO.

BB R

MASTERS SHOE STORE, INC.,

BOARDMAN SHOP. PLAZA,

215 BROADMAN-CANFIELD RD.,

YOUNGSTOWN, OHIO

BB R

GARRISON'S SHOE STORE.

319 MAIN ST.,

ZANESVILLE, OHIO

(A) BB

SHIPE'S SHOES.

106 E. MAIN,

ADA, OKLA.

BB R

McCLAIN'S SHOES.

ALVA, OKLA.

(A) BB

HILL SHOES.

133 W. MAIN ST.,

ARDMORE, OKLA.

BB

PATES SHOE STORE.

304 S. DEWEY,

BARTLESVILLE, OKLA.

(A) BB R

RITCHIE'S SHOE STORE.

103 S. MAIN ST.,

BLACKWELL, OKLA.

(A) BB R

PERKINS-ROBERTS SHOES.

417 CHICKASHA,

CHICKASHA, OKLA.

BB R

WYLIE'S SHOE STORE.

104 E. BROADWAY,

CUSHING, OKLA.

(A) BB R

Continued Exhibit 3722

COCHRAN'S SHOES.

824 MAIN ST.,  
DUNCAN, OKLA.

BB R

FISHER & MISSEN SHOES.  
112 S. ROCK ISLAND,  
EL RENO, OKLA.

BB R

EARNST BROS.  
110 N. INDEPENDENCE AVE.,  
EMID, OKLA.

BB R

KENNER SHOES.  
113 W. OKLAHOMA,  
GUTHRIE, OKLA.

BB R

WILLIAMS SHOELAND.  
509 W. MAIN ST.,  
HENRYETTA, OKLA.

BB R

BOONE'S SHOES.  
421 SO. MAIN,  
HOBART, OKLA.

BB R

EARNST BROS.,  
TAC

Continued Exhibit 3723

NICHOLS SHOE STORE.  
LOUIS H. & SUE RAY NICHOLS,  
HOLDENVILLE, OKLA.

(A) BB R

SHERMAN'S SHOE STORE.  
IDABEL, OKLA.

BB

DUTCHER'S BUSTER BROWN S. S.,  
408 D ST.,  
LANTON, OKLA.

BB

PATE'S SHOE STORE.  
109 E. CHOCTAW AVE.,  
MALESTER, OKLA.

(A) BB R

THE HUB BOOTERY.  
23 NORTH MAIN,  
MIAMI, OKLA.

BB R

HENSON-HARDIN SHOE STORE, INC.,  
113 E. ATKINSON AVE.,  
MIDWEST CITY, OKLA.

BB R

RUDY'S SHOE STORE.

Continued Exhibit 3724

B & B BROMBILT SHOE STORE,  
MUSKOGEE, OKLA.

BB R

L & H SHOES.  
417 W. BROADWAY,  
MUSKOGEE, OKLA.

(A) BB R

HILL & SHIPE SHOE STORE,  
122 E. MAIN ST.,  
NORMAN, OKLA.

BB R

HENSON-HARDIN S.B.S.S.,  
3200 NO. MAY AVE.,  
OKLAHOMA CITY, OKLA.

BB R

WYLIE'S SHOES.  
OKMULGEE, OKLA.

BB R

PAUL'S SHOES.  
200 S. CHICKASHAW,  
PAULS VALLEY, OKLA.

MOORE'S S.B.S.S.,  
TAC

4

MOORE'S SHOES.  
200 S. CHICKASHAW.  
PAULS VALLEY, OKLA.

MIDWEST CITY, OKLA.  
BB R

HOBART, OKLA.  
(A) BB R

EARNST BROS..  
305 E. GRAND.  
PONCA CITY, OKLA.  
(A) BB R

RUDY'S SHOE STORE.  
VINITA, OKLA.  
(A) BB

HARRISON'S CLOTHIERS, INC..  
110 E. DEWEY AVE..  
SAPULPA, OKLA.  
(A) BB

NICHOL'S SHOE STORE.  
107 WENOKA.  
VENOKA, OKLA.  
(BB R

EARNST BROS..  
110 E. MAIN.  
SEAFREE, OKLA.  
(A) BB R

F & W SHOES, INC..  
900 MAIN ST..  
WOODWARD, OKLA.  
(A) BB R

LORENZ DEPT. STORE.  
COQUILLE, OREG.  
(A) BB R

EARNST BROS..  
750 MAIN ST..  
STILLWATER, OKLA.  
(A) BB R

LONG'S SHOE STORE.  
234 W. FIRST ST..  
ALBANY, OREG.  
(BB R

GINNE'S SHOE STORE.  
136 S. THIRD.  
CORVALLIS, OREG.  
(A) BB R

RAY ALLEN SHOES.  
3127 HARVARD ST..  
TULSA, OKLAHOMA.  
(A) BB R

BUSTER BROWN SHOE DEPT..  
% THE PARK VIEW DEPT. STORE.  
ASHLAND, OREGON  
(BB

HOOVER'S SHOE STORE.  
532 MAIN.  
COTTAGE GROVE, OREGON.  
(A) BB R

COX'S DEPT. STORE.  
2122 S. YALE.  
TULSA, OKLA.  
(A) BB

BUSTER BROWN SHOE STORE.  
1125 COMMERCIAL ST..  
ASTORIA, OREGON.  
(BB R

NICKLES BUSTER BROWN S.B..  
947 WILLAMETTE ST..  
EUGENE, OREGON.  
(BB

VINCENT-MEDMOND CO., INC..  
DBA BUSTER BROWN SHOE STORE.  
153 N. BROADWAY.  
COOS BAY, OREG.  
(BB R

LORENZ DEPT. STORE.  
COQUILLE, OREG.  
(A) BB R

GINNE'S SHOE STORE.  
136 S. THIRD.  
CORVALLIS, OREG.  
(A) BB R

HOOVER'S SHOE STORE.  
532 MAIN.  
COTTAGE GROVE, OREGON.  
(A) BB R

NICKLES BUSTER BROWN S.B..  
947 WILLAMETTE ST..  
EUGENE, OREGON.  
(BB

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Continued Exposed 1/23H

VINCENT REDMOND CO..  
BUSTER BROWN SHOE STORE,  
207 S. E. 6TH ST..  
GRANTS PASS, OREGON.  
BB

ADAMS BUSTER BROWN S.S..  
130 N. MAIN ST..  
GRESHAM, OREG.  
(A) BB R

EDWIN'S SHOES,  
164 MAIN ST..  
HEMISTON, OREGON  
BB R

ERIC M'AGGI SHOE STORE,  
207 E. MAIN ST..  
HILLSBORO, OREG.  
BB R

HOGATAY'S SHOES,  
617 MAIN ST..  
KLATATHI FALLS, OREGON  
(A) BB R

BOB'S SHOE STORE,  
634 MAIN ST..  
LEBANON, OREGON.

Continued Exposed 1/23H

BUSTER BROWN SHOE STORE,  
311 3RD AVE..  
MC MINNVILLE, OREGON  
(A) BB

VINCENT REDMOND CO..  
BBA BUSTER BROWN SHOE STORE,  
15 SO. CENTRAL,  
MEDFORD, OREG. BB

NICKLES BUSTER BROWN S. S..  
1203 MAIN ST..  
MILWAUKIE, OREGON.  
BB

NICKLES BUSTER BROWN S. S..  
724 MAIN ST..  
OREGON CITY, OREGON.  
BB R

VANDENBURGH'S SHOE STORE,  
OSWEGO, OREGON BB R  
(A)

BUSTER BROWN SHOE DEPT..  
LIPMAN WOLFE & COMPANY,  
251 S. W. 5TH AVE..  
PORTLAND, OREGON.

Continued Exposed 1/23H

SPELLMAN BROS..  
% MILLER MERCANTILE CO..  
43RD & HANCOCK ST..  
PORTLAND, OREGON.  
BB R

VANDENBURGH'S SHOE STORE,  
6316 S.W. CAPITAL HIGHWAY,  
PORTLAND, OREG.  
(A) BB R

GINRE'S SHOES,  
625 S.E. JACKSON,  
ROSEBURG, OREGON  
(A) BB R

DON'S SHOE STORE,  
272 SO. 1ST ST..  
ST. HELENS, OREGON  
(A) BB

ARBuckle's, INC..  
395 N. HIGH ST..  
SALEM, OREGON.  
BB

BUSTER BROWN SHOE STORE,  
THE DALLES, OREGON.  
BB R

Continued Exposed 1/23H

SHOE BOX,

7

BUTREY'S SHOES.

5

TRICONG BATHSILE SHO. A.L.4

Continued Exposed 1/23H

fol. 81





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409 shoe stores on the Brown Franchise Program carry fire and extended coverage from the National Union Fire Insurance Company in Pittsburgh, Pennsylvania.

The owners and/or managers of 327 shoe stores on the Brown Franchise Program buy group life insurance from Prudential Life Insurance Company of America.

Brown Shoe Company does not make any payment of money to these insurance companies to induce them to give a lower rate to stores on the Brown Franchise Program.

[fol. 83E] COMMISSION EXHIBIT 27 A-O

## Group VII—No. 1

During the period from November 1, 1949 (the beginning of Brown's 1950 fiscal year) to October 31, 1955 (the end of Brown's 1955 fiscal year) Brown represented that merchants who were in the Brown Franchise program would receive a discount or price, not available to individual outlets or establishments purchasing separately, on the following items:

1. Fire and extended coverage insurance, purchased from the Royal Indemnity Company.
2. Certain rubber footwear (storm footwear and Keds) manufactured by U. S. Rubber Company.

## Fire and Extended Coverage Insurance

A. The extent of the discount from the actual fire and extended coverage insurance rate that would have been applied by the Royal Indemnity Company to the particular property of each merchant who was in the Brown Franchise program is unknown to Brown. Brown made the following statement to merchants in the plan:

"Because of the favorable experience the insurance company has had with our Franchise Store operators during the past 25 years, we are in a position to save the retailer approximately 25% on his fire insurance premium compared to his local rate."

B. This fire and extended coverage insurance was made available by Brown, in the period 1952-6, to merchants on the Wohl Plan, but not to other customers of Brown or its subsidiary corporations at any time between November 1, 1949 and October 31, 1955.

C. Total net fire and extended coverage premiums, after discount, paid under this arrangement were, for the calendar years indicated, as follows:

[fol. 84E]

1950	.....	\$76,388.86
1951	.....	83,874.60
1952	.....	83,286.60

1953 .....	90,586.00
1954 .....	90,916.31
1955 .....	91,681.63

Total net premiums billed to Wohl Plan merchants for fire and extended coverage insurance for calendar years indicated were as follows:

1952 .....	\$ 1,489.00
1953 .....	5,345.00
1954 .....	5,197.00
1955 .....	6,684.00

D. The stores and departments owned or operated by Wohl and Regal were not covered by this arrangement.

#### Rubber Footwear

A. U. S. Rubber Company represented to Brown, in the period 1950 to October 31, 1955, that, if merchants on the Brown Franchise program purchased storm footwear and Keds directly from U. S. Rubber, these merchants would be entitled to certain discounts. Brown, relying on these representations of U. S. Rubber, represented to merchants on the Brown Franchise program that they would receive an additional discount on purchases of storm footwear and Keds made by these Brown Franchise merchants from U. S. Rubber through Brown, when said purchases met the conditions listed under paragraph C below.

B. The additional discounts on purchases of storm footwear and Keds were not made available by Brown to its customers other than merchants on the Brown Franchise program.

C. Brown represented that the following additional discounts would be available to merchants on the Brown Franchise program on the purchase of rubber through Brown [fol. 85E] from U. S. Rubber Company over and above the discounts available if purchased directly from U. S. Rubber.

#### Storm Footwear

Advance orders of more than 144 pairs and less than 480 pairs—3%.

Fill-in orders if bought in 12 pair run and if merchants ordered more than 144 pairs on advance orders—8%.

## Keds

Fill-in orders if bought in 12 pair run and if merchant ordered at least 480 pairs on advance orders —8%.

The total net dollar shipments of all types of rubber footwear, including, but not limited to storm footwear and Keds, to merchants on the Brown Franchise program and Wohl family stores, purchased through Brown during the fiscal years indicated are listed below. The available information does not indicate the amount of goods purchased to which the additional discounts listed above apply. Brown estimates that 15% of the dollar amount of the sales listed below were rubber footwear to which the above listed discounts applied.

1950 .....	\$ 665,092.53
1951 .....	955,049.61
1952 .....	1,029,657.13
1953 .....	1,185,817.43
1954 .....	1,158,127.33
1955 .....	1,214,857.22

D. Storm footwear and Keds for family shoe stores operated by Wohl were purchased by Wohl from U. S. Rubber Company under the terms listed in paragraph C immediately above. On its other purchases of rubber footwear, Wohl makes its own arrangements for purchase with the individual vendors.

Regal makes its own arrangements for purchase of rubber footwear with the individual vendors.

[fol. 86E]

## COMMISSION EXHIBIT 28 A-M

## Group V, No. 5E

## Brown Franchise Stores

## Reasons for Separation From Franchise Program

October 31, 1949-October 31, 1955

Exhibit 44 lists, as to each Brown Franchise store which ceased to be such in the period October 31, 1949 to October 31, 1955, the reason why it was separated from the program.

## Answers to Interrogatories

## Group V—Interrogatory No. 5E

Listed below are the names of the Brown Franchise Stores, with their city and state opposite them, which were separated from the Franchise Program between October 31, 1949 and October 31, 1955. They are grouped according to the predominant reason or reasons which led to their withdrawal from the Franchise Program. Also indicated, where the reason for such withdrawal was other than the sale or closing of that store, is whether the outlet remained a regular customer of Brown Shoe Company for any period thereafter.

The reasons are summarized and explained (where necessary) as follows:

- I. Store Sold.
- II. Closed Business.
- III. Failed to Comply Generally with the Conditions of the Franchise Program.

This included some or all of the following:

- A. Failure to submit monthly reports.
- B. Unsatisfactory system of bookkeeping.
- C. Handling conflicting lines.
- D. Insufficient sales volume.



[fol. 87E] IV. Credit Reasons.

The firms listed under this category vary from those which were actually sued for payment of past due bills to those which, because of their financing, could not be given sufficient credit to support their purchases as a franchise account. It is necessary for a franchise account to have a larger line of credit than a general account because each franchise account does a relatively large amount of its purchasing from Brown. Thus, a franchise arrangement may be terminated with a retail outlet for credit reasons and the store may still have sufficient credit to remain a general account of Brown.

V. Conflicting Lines.

This covers the situation where the franchise account sold shoes of another company which directly conflicted with a line or lines of shoes manufactured by Brown Shoe Company. This was completely contrary to the franchise agreement.

VI. Insufficient Sales Volume.

VII. Changed Grade of Shoe Primarily Sold to a Cheaper Grade.

Where the franchise account changed the selling emphasis of his store to cheaper shoes, he necessarily switched the major portion of his business away from Brown Shoe lines.

VIII. Customer Requested Termination of Franchise.

IX. Miscellaneous Reasons.

It should be re-emphasized that the above grouping are by predominant reason. In many cases, there were other reasons present which contributed to the decision to terminate the franchise.

[fol. 88E] I. Store Sold

1. Patrick Shoe Co.—Fort Smith, Arkansas
2. Cassidys BBilt Shoe Store—Hanford, California
3. Lingren's Shoes—Oakland, California

4. Mervyn's, Inc., Mervyn's Department Store—San Lorenzo, California
5. Wright Shoe Store—Columbus, Georgia
6. Trowbridge BBilt Shoe Store—Clinton, Illinois
7. Kar-Wid Shoes, Inc.—Freeport, Illinois
8. Cushion Shoes—Skokie, Illinois
9. Burgess Shoe Store—Greensburg, Indiana
10. Jack's Bootery—Charles City, Iowa
11. Stevens Shoes, Inc.—Ottumwa, Iowa
12. Bennetts Shoes, Brookline, Massachusetts
13. Douglas Store—Coldwater, Michigan
14. McCoy's Shoes—Lansing, Michigan
15. Fisher's—Marshall, Michigan
16. J. W. Millikan, Inc., Dept. 23—Traverse City, Michigan
17. Richardson Shoe Co.—Kansas City, Mo.
18. Concourse Buster Brown Shoes—Bronx, New York
19. Benson's Shoe Shop—Brooklyn, New York
20. Royal Shoes—Brooklyn, New York
21. Carman Millevolte Shoe Store—Hicksville, New York
22. The Bootery—Jamestown, New York
23. Brownbilt Shoe Store—Penn Yan, New York
24. Carl's Shoes—Caldwell, Ohio
25. Nissen's Inc., Dept. 5A—Oklahoma City, Oklahoma
26. Roblee Shoe Store, 609 S. W. Washington—Portland, Oregon
- [fol. 89E] 27. Spellman's 511 S. W. 16th Avenue—Portland, Oregon
28. Paynes BBilt Shoe Store—Harlingen, Texas
29. Spellman's—Bellingham, Washington
30. Spellman's—Bremerton, Washington
31. Spellman's—Olympia, Washington

## II. Closed Business

1. DeShields Shoes—Troy, Alabama
2. Mathison's Shoe Store—Texarkana, Arkansas
3. Grandes Shoes—Antioch, California
4. Victors Shoes—Burlingame, California
5. Sigs Shoe Store—Monrovia, California
6. Grandes Shoes—Palo Alto, California
7. Leggetts Shoe Dept., c/o Leggetts Dept. Store—Tulare, California
8. Turners Shoe Store—Victorville, California
9. Schmidts Shoe Store—Willows, California

10. Dogue's Dept. Store—Panama City, Florida
11. Farmer's Roblee Shoe Store, 307 Zack—Tampa, Florida
12. Bellamy's Shoe Store—Idaho Falls, Idaho
13. Schmitz Shoes—Moscow, Idaho
14. Wilmington's BBilt Shoe Store—Morris, Illinois
15. B & S Shoes—Charleston, Indiana
16. Smith's Smart Shoes, Hessville, Indiana
17. Branson Shoes—Clinton, Iowa
18. Passmores Shoes—St. Ignace, Michigan
19. Hilbig's BBilt Shoe Store—Medina, New York
20. Buddy Shoes—Cleveland, Ohio
21. Jamra Bootery—Toledo, Ohio
- [fol. 90E] 22. Master's Shoe Store, 2724 Market St.—  
Youngstown, Ohio
23. Vincent-Redmond, Inc.—North Bend, Oregon
24. Arbuckles, Inc.—Sweet Roma, Oregon
25. Nahi's BBilt Shoe Store—Clairton, Pennsylvania
26. Nahi's, c/o Miller's Dept. Store—Scottsdale, Pennsylv-  
vania
27. Nahi Shoe Store—Waynesburg, Pennsylvania
28. Swat's Shoe Store—McKenzie, Tennessee
29. Selmer Shoe Store—Selmer, Tennessee
30. Famous Shoe Store—Abilene, Texas
31. Jones Shoe Store, Inc.—Wichita Falls, Texas
32. Van's Shoes, Inc.—Bristol, Virginia
33. Roblee Shoe Store, 1404 3rd Ave.—Seattle, Washington

### III. Failure to Comply Generally with Conditions of Franchise

1. Feinbergs—Opalika, Alabama
2. Inmans Dept. Store—Arkadelphia, Arkansas
3. Peters Shoe Store—Glendale, California R (9-16-55)
4. The Bootery—Sandpoint, Idaho
5. Cook's Shoe Store, Columbus, Indiana
6. Cook's Shoe Store—Wabash, Indiana
7. J & P Shoe Store—Independence, Iowa
8. Fitch's Shoe Store—Pocahontas, Iowa
9. Meier BBilt Shoe Store—Abilene, Kansas
10. Chaument Shoe Store—Eunice, Louisiana
11. Arnold Elmquist Shoes, 2707 E. Lake—Minneapolis,  
Minnesota

- [fol. 91E] 12. Arnold Elmquist Shoes, 11 W. Lake—Minneapolis, Minnesota  
 13. Carl Elmquist Shoes, 1541 E. Lake—Minneapolis, Minnesota R (5-26-54)  
 14. Elmquist Shoe Store, 28 So. Seventh St.—Minneapolis, Minnesota  
 15. Elmquist Shoes, 6615 Lyndale Ave., So.—Minneapolis, Minnesota  
 16. Floyd's Shoes—Roswell, New Mexico  
 17. Bennetts Shoe Co.—Galion, Ohio  
 18. Wise Shoe Store—McKees Rocks, Pennsylvania  
 19. Oneks Brown Bilt Shoe Store—Onek, Washington  
 20. Atwood's Shoe Store—Seattle, Washington  
 21. B & M Bootery—Antigo, Wisconsin R (4-12-55)  
 22. McDonald BBilt Shoe Store—Ashland, Wisconsin

Note: R stands for reinstated as a franchise account on the date indicated in parentheses. Every other account was sold as a general account after its termination as a franchise account.

#### IV. Credit Reasons

1. Brager's Shoes—Arcadia, California
  2. Timm's Shoes—Sierra Madre, California (sued for collection)
  3. Braegers Shoes—Temple City, California
  4. Haltermans BB Shoe Store—Yreka, California
  5. Rudolphs Fine Footwear—Trinidad, Colorado—S
  6. Saults Shoe Store—Trinidad, Colorado—S
  7. Purdys Shoe Store, Inc.—Owensboro, Kentucky—S
  8. Leas Shoe Store—Hopkins, Minnesota
  9. Browers Brownbilt Shoe Store—Shelby, North Carolina
- [fol. 92E] 10. Prestons Shoes, 400 W. Main St., Dennison, Texas—S
11. Webbe Famous Shoe Store—Marshall, Texas
  12. Chases Shoe Store, 117 E. Broadway—Moses Lake, Washington—S

Note: The stores followed by an "S" above were transferred in status to general accounts at least for a temporary period after termination of their franchise. Rudolphs Fine Footwear was sold small fill-in orders as a general account

until June, 1955. It had a maximum line of credit of \$100 during this time. Saults Shoe Store was active as a general account only for a short period after going off franchise and is now considered an inactive account. In fact, this store may have been sold. Purdys Shoe Store was transferred and sold as a general account after its termination as a franchise account. Prestons Shoes—Sales relationship with Prestons were terminated completely when it went off franchise in June 1951. This store was sold again as a general account beginning in March 1952 and continued to be sold until December 1955 when the store sold out. Chases Shoe Store was sold as a general account at its new location, 308 Division Street, Moses Lake, Washington.

#### V. Conflicting Lines

1. Fields Shoes—Burbank, California
2. Victor's Shoes—Redwood City, California
3. Laurel Shoes—San Carlos, California
4. Laurel Shoes—San Mateo, California
5. Rovall and McCall—Emporia, Kansas
6. Colberts Shoes—Mankato, Minnesota
7. Smart Shoe Store—Canton, Mississippi
8. Hopkins Shoes, Inc.—Granada, Mississippi
9. Toreys Shoes—Hattiesburg, Mississippi
10. Altier and Sons Shoes, 12 Corners, Monroe Ave.—Rochester, New York
- [fol. 93E] 11. Altier and Sons Shoes, 900 W. Main—Rochester, New York
12. Gimre Shoe Store, Forest Grove, Oregon
13. King's—Pendleton, Oregon
14. Wise Shoe Store—McKees Rocks, Pennsylvania
15. Wise Shoe Store, 2820 Robinson Blvd.—Pittsburgh, Pennsylvania
16. Silers BBilt Shoe Store—Winchester, Tennessee
17. Colberts Shoes—Chippewa Falls, Wisconsin
18. Colberts Shoes—Eau Claire, Wisconsin
19. Colberts Shoes—Marshfield, Wisconsin

Note: Every one of these accounts was sold as a general account after its termination as a franchise account.

## VI. Insufficient Sales Volume

1. Dalton's Family Shoe Store—Sidney, Nebraska
2. Brownbilt Shoe Store, 7 W. Bridge St.—Oswego, New York
3. Kamps Shoe Store, Inc.—E. Pittsburgh, Pennsylvania
4. Wahrenbergers BBilt Shoe Dept., c/o J. Wahrenberger & Son—Coaroe, Texas

Note: Every one of these accounts was sold as a general account after its termination as a franchise account.

## VII. Changed Grade of Shoes Primarily Sold to Cheaper Grade

1. Heinemann's, Inc.—Jonesboro, Arkansas
2. Heinemann's, Inc.—Paragould, Arkansas

Note: The above stores were sold as general accounts after their termination as franchise accounts.

## [fol. 94E] VIII. Customer Requested Termination of Franchise

1. The Shoe Box—Thomasville, Georgia
2. McCoys Shoe Store—Jacksonville, Illinois

Note: The above stores were sold as general accounts after their termination as franchise accounts.

## IX. Miscellaneous Reasons

1. Burkhart's Shoes, c/o The Bootery—Adrian, Michigan  
This store never opened.
2. State Contracts, Inc.—Yonkers, New York  
This account was owned by L. M. Blumstein of West 125th Street, New York City and was consolidated with L. M. Blumstein, Inc. for credit purposes at the request of Mr. Blumstein. This necessitated taking them off the Franchise Program. L. M. Blumstein, Inc. was not on the program.
3. Marchana's Dept. Store—Waxahachie, Texas  
This store was actually never on the Franchise Program although carried as a franchise store for 2 months. It was a general account.
4. Scuddy's Shoe Store—Beaumont, Texas



5. Scuddy's Youthful Shoes, 431 Proctor—Port Arthur,  
Texas

These Scuddy's Stores were never actually operated as franchise stores in accordance with the Franchise Program. They were removed from the Program by mutual assent between the owner and the manager of Brown's Franchise Division.



April 24, 1958

BROWN FRANCHISE STORES  
Separated From The Franchise Program  
Nov. 1, 1954 - April 1, 1958

Alabama

Birmingham  
(2-11-57)

Sikes Eratton Shoe Co., c/o Kessler's Five Points West  
This department closed.

Arkansas

Arkadelphia  
(10-21-55)

Inmans, 7th and Main Sts.

Small volume of purchases from Brown, failure to submit monthly reports and general failure to use the franchise system. Transferred to regular account, and remains a customer.

Hope  
(8-20-57)

Burkes Shoe Store, 112 W. Second St.

Purchases from Brown decreased to small volume last six months this store was on franchise while its owners contemplated selling the store. Store was under capitalized creating a credit problem. Transferred to regular ledger. Store finally sold February 1, 1958, renamed Keesey Shoe Store, which became a regular account, and remains a customer.

Little Rock  
(6-21-57)

Pate and Davies Shoe Dept., c/o Rube and Scott

Outlet was a leased department in store. Store was sold and leased department closed.

Mountain Home  
(6-21-56)

Ken Morris Shoe Store

Store graded down to lower priced lines in much of the merchandise it handled. Transferred to regular account, and remains a customer.

California

Compton  
(10-15-57)

Jan Lee Shoe Corp. (dba Samuels Shoe Store), 209 E. Compton

Store handled shoes which conflicted with Brown shoes. Transferred to regular account, and remains a customer.

Covina  
(2-19-58)

Lee Shafer's Shoes c/o McCaiges Department Store,  
San Bernardino and Rimsdale Rds.

This department store closed and the leased shoe department closed with it.

California (Cont.)

Los Angeles  
(2-6-58)

La Tijera Bootery, 6907 La Tijera Blvd.

General failure to use the franchise system. Store inventory was consistently too high for the volume of its business, creating a credit problem and store handled shoes which conflicted with Brown shoes. Transferred to regular account and remains a customer.

Los Angeles  
(5-28-56)

Lesley's Shoe Store, 2141 Colorado Blvd., (Eagle Rock)

Landlord raised rent upon expiration of lease. This business was discontinued.

Modesto  
(7-15-57)

Burton's Shoe Store, 910 Tenth Street

Business was liquidated.

Norwalk  
(11-5-57)

Richards Shoes, 11707 Rosecrans

Store handled shoes which conflicted with Brown shoes. Transferred to regular account and remains a customer.

Ontario  
(7-1-56)

Hays and Slauson

Store closed due to loss of lease.

Petaluma  
(1-18-56)

Southwicks Brownbilt Shoe Store, 155 Main St.

Store was sold to Marc Paul, Inc. who chose not to operate it as a franchise store. Transferred to regular account and remains a customer.

Redwood  
(2-6-58)

Tenser's Childrens Bootery, Woodside Plaza

Business closed and store was sold.

Richmond  
(7-12-56)

Lingren Jacobson Shoes, 921 McDonald (a/k/a Linn's, Inc. dba Jacobson's Shoes)

Purchases from Brown decreased to almost nothing by May 1956. Transferred to regular account and then customer stopped purchasing altogether.

San Carlos )  
San Mateo )  
(6-6-55)

Laurel Shoes, 655 Laurel St.  
120 25th St.

Customer carried shoes in both stores which conflicted with Brown shoes. Transferred to regular account and remains a customer.

Georgia

Cedartown  
(11-17-55)

Center Shoe Store

Store sold to Rhinehart & Mobley. They did not wish to operate it as a franchise store.

Georgia (Cont.)Columbus  
(9-21-55)

Wright Shoe Store, 2216 Wynnton Rd.

Business liquidated and new owners of store did not purchase Brown lines.

IahoBuhl  
(8-22-57)

Ralphs Shoe Store, 106 Broadway

Small volume of purchases from Brown, and store handled shoes which conflicted with Brown shoes. Transferred to regular account and remains a customer.

IllinoisBerwyn  
(2-6-58)

Cermak Shoe Store, 6502 W. Cermak Rd.

This store closed.

E. St. Louis  
(10-1-57)

Beatty's, Inc., 340 Collinsville

This store closed.

IndianaEvansville  
(2-6-58)

Seymours Shoes, 4530 First Avenue

This store handled shoes which conflicted with Brown shoes. Transferred to regular account and remains a customer.

IowaEmetsburg  
(6-21-57)

O'Connor's Shoe Store, 907 Broadway

Small volume of purchases from Brown, and store was undercapitalized. Transferred to regular account and remains a customer.

Lake City  
(12-9-57)

Gordon's Shoes

This customer requested to be dropped, from the franchise program. Transferred to regular account and remains a customer.

Newton  
(10-11-56)

Halverson's

This store was sold.

Perry  
(7-1-57)

Eddy's Shoe Store, 1116 Second Street

This store carried shoes which conflicted with Brown shoes, and failed to submit monthly reports. Transferred to regular account and remains a customer.

Iowa (Cont.)

Pocahontas  
(9-12-55)

## Fitch's Shoe Store

This account did not submit the monthly reports and generally failed to use the franchise system. It graded down to lower priced lines in much of the merchandise it handled. Transferred to regular account and remains a customer.

Spencer  
(8-13-57)

## Feldman Shoe Department c/o Feldman Department Store

This department closed and then was leased to another operator.

Kansas

Beloit  
(10-31-56)

## Family Shoe Store, Inc., 117 S. Mill St.

This store graded down to lower priced lines in much of the merchandise it handled. Transferred to regular account and remains a customer.

Colby  
(3-12-57)

## Overman's Shoe Store, 420 Franklin St.

Purchases from Brown decreased to a small volume. Store carried shoes that conflicted with Brown shoes. Customer also generally ceased using the franchise system. Transferred to regular account and remains a customer.

Dodge City  
(12-10-56)

## Lloyd's Dodge City Shoes, Inc.

This store closed.

Emporia  
(6-6-55)

## Revell and McCall, 703 Commercial St.

This store carried shoes which conflicted with Brown shoes. Transferred to regular account and remains a customer.

Fort Scott  
(1-22-58)

## McCrum and Maupin Shoes, 4 S. Main

This business was under capitalized creating a credit problem. It also generally failed to use the franchise system. Transferred to regular account and remains a customer.

Kentucky

Louisville  
(8-13-56)

Shoe  
B & B/Store, 5330 S. Third St.

This store is closed.

Michigan

Adrian  
(2-18-55)

## Burkhart's Shoe Company c/o The Bootery

Store was supposed to open as a new store on March 1, 1955. The store did not open.

Michigan (

Alma  
(12-13-55)

Detroit  
(4-4-57)

Lansing  
(7-7-55)

Rochester  
(3-7-58)

Minnesota

Edina  
(5-25-55)

Hopkins  
(1-12-55)

Waukegan  
(2-8-55)

St. Paul  
(3-23-56)

Willmar  
(7-25-55)



Michigan (Cont.)Alma  
(12-13-57)

Lamerson's Brownbilt Shoe Store, 232 E. Superior

Small and declining volume of purchases, business under capitalized, no monthly reports. Status as customer now under consideration by Credit Department.

Detroit  
(4-4-57)

Campbell Shoe Store, 11322 E. Jefferson Ave.

This store closed.

Lansing  
(7-7-55)

McCoys Shoes, 320 South Washington Ave.

This store was sold.

Rochester  
(3-7-58)

Shermans Shoes, Inc., North Hill Shopping Center

A leased department which closed.

MinnesotaEdina  
(5-25-57)

Warren Shoe Co., c/o Oreck's

This department closed.

Hopkins  
(1-12-55)

Lea's Shoe Store

This business was under capitalized and presented a severe credit problem. Because of this lack of capital and failure to pay bills when they came due, this account was dropped.

Mankato  
(2-8-55)

Colberts Shoes, 308 S. Front

This store failed to submit monthly reports and handled shoes that conflicted with Brown shoes. Transferred to regular account and remains a customer.

St. Paul  
(3-23-56)

Family Shoe Plaza, 2487 W. 7th Street

The customer requested that he be dropped from the franchise program. Transferred to regular account but later dropped because of failure to pay bills when due.

Willmar  
(7-25-57)

Frisholm's

This store discontinued operation.

MississippiColumbia  
(6-19-56)

Pooles Shoes, 723 Main Street

Customer requested that the store be removed from the franchise program. Transferred to regular account and remains a customer.

Gulfport  
(10-21-57)

Bomar's, Inc., 2415 14th Street

This store closed.

MissouriCarrollton  
(2-16-56)

Rowland Shoe Store

This store was under capitalized which created a credit problem because of slow payment. It bought conflicting lines from manufacturers which extended easier credit than Brown. It did not cooperate in submitting monthly reports. Transferred to regular account but purchases dropped off and store is no longer a customer.

NebraskaOmaha  
(1-29-58)

Lloyds Buster Brown Shoe Store, 5723 Military Avenue

This store closed.

Sidney  
(1-7-55)

Daltons Family Shoe Store

Small volume of purchases from Brown and slow payments. Transferred to regular account. Ownership of this shoe business has changed hands since then but payments remain slow, credit is bad, and purchases have dropped to almost nothing.

New YorkAuburn  
(8-19-57)

Goodwin Shoe Co., Inc., c/o Wm. Hislop &amp; Co.

This was a leased department in a department store. The department was sold to the Cutter Karcher Shoe Company.

Bronx  
(2-2-56)

Bales Buster Brown Bootery, 104 E. 107th St.

This store was liquidated.

Bronx  
(2-25-55)

Concourse Buster Brown Shoes, 2255 Grand Concourse

This business was sold.

Cedarhurst, L.I.  
(12-13-56)

Buster Brown Shoes

Customer requested to be removed from the franchise program. Transferred to the regular ledger and remains a customer.

New York (Cont.)Jamestown  
(4-20-55)

The Bootery, 216 N. Main

This store was sold.

Lockport  
(2-1-56)

The Brownbilt Shoe Store, 88 Main St.

This store was closed.

Medina  
(8-26-55)

Hilbig's Brownbilt Shoe Store, 438 N. Main St.

This store was closed.

Williamsville  
(6-25-57)

Williamsville Bootery, 5502 Main Street

This store was sold.

Yonkers  
(3-16-55)

State Contracts, Inc., 20 East Drive

This store was consolidated into Blumstein's Department Store which did not keep its financial records separate so no regular financial report was possible to the Franchise Division. Transferred to regular account and remains a customer.

New JerseyManville  
(11-2-55)

The Shoe Box

This store was closed.

North CarolinaLenoir  
(8-15-55)

Pilkington Shoes

Store sold to Petersons. Now called Petersons Shoes and is on franchise program.

Jacksonville  
(12-9-57)

Antell's, New River Shopping Center.

This store failed to get a lease in the shopping center and never officially opened.

OhioCaldwell  
(12-29-54)

Carl's Shoes, 408 Cumberland St.

Business sold to son-in-law. Transferred to regular account at customers request and remains a customer.

Ohio (Cont.)Columbus  
(1-17-56)

Evans and Schwartz, Inc., 304 N. Hugh St.

This store was taken into another corporation which owned downtown store not on franchise program. Necessary to take this store off the franchise program because both stores were reporting their financial condition together and either Brown's regular accounting department or its franchise plan accounting department, but not both, could handle the account. Transferred to regular account and remains a customer.

Piqua  
(6-13-56)

Norton's, Inc.

Did not use the franchise bookkeeping or accounting system. No monthly reports. Store carried shoes that conflicted with Brown shoes. Transferred to regular account and remains a customer.

Stuebenville  
(2-13-58)

Nahi's Shoe Store

This store closed.

Toledo  
(3-7-55)

Jamro Bootery, 1241 Searles Road

Small volume of purchases from Brown. This store closed in March 1955, and its stock was moved to new location at 401 Hawley. Transferred to regular account and later ceased purchasing from Brown.

Youngstown  
(1-17-55)

Masters Shoe Store, 2724 Market Street

This store was closed.

OregonAshland  
(11-27-56)

B. B. Shoe Dept., c/o Park View Dept.

This leased department closed in November 1956, and was reopened February 1957 and added to the Franchise Program again.

Forest Grove  
(6-17-55)

Gimre's Shoe Store

Store handled shoes which conflicted with Brown shoes. Transferred to regular account and remains a customer.

Hermiston  
(12-31-56)

David's Shoes, 175 Main Street

This store closed.

Klamath Falls  
(12-31-56)

Arbuckles, Inc., 717 Main St.

This store closed.

Portland  
(11-14-57)

Roblee Shoe Store, 525 Washington St..

This store closed.

Oregon (Cont.)

Prineville  
(2-6-58)

Walters Shoe Store, 123 W. Third

Purchases from Brown decreased to a very small volume.  
Store carried shoes which conflicted with Brown shoes.  
Transferred to regular account and customer later ceased  
purchasing from Brown.

Alabama

Pryor  
(6-26-57)

Rudy's Shoe Store, 226 E. Graham

This store was closed.

Pennsylvania

California  
(7-17-57)

Nahi's Shoe Store

This store closed.

De Bois  
(8-13-56)

Shugarts Shoes, 33 N. Brady

This store closed.

Huningdon  
(3-12-58)

Heydricks Shoes, 713 Washington

Customer requested removal from the franchise program.  
Transferred to regular account and remains a customer.

E. Pittsburgh  
(7-29-55)

Kamps Shoe Store, 102 Electric

Volume of purchases from Brown decreased as store was being  
closed. Finally store was sold.

Scottdale  
(4-14-55)

Nahi's, c/o Millers Department Store

This leased department closed.

Rhode Island

Newport  
(4-15-57)

Konrad's, Inc., 204 Thames Street

This store closed. It went into bankruptcy.

South Dakota

Vermillion  
(8-17-57)

Vollmar and Campbell

The store closed.

Wisconsin

Kingsport  
(11-17-55)

Harrison Shoe Store, 158 Broad Street

This store closed.

Tennessee (Cont.)

Memphis  
(1-29-58)

Wachters Shoe Store, 3401 Summer Ave.

Customer requested removal from the franchise plan.  
Transferred to regular account and remains a customer.

Nashville  
(8-17-56)

Grimes Shoe Department

This was a leased department. The department store was sold, and the new owner cancelled the lease.

Selmer  
(6-27-55)

Selmer Shoe Store, 113 West Court Avenue

This store closed.

Texas

Amarillo  
(8-2-56)

Kenyon's, 1100 S. Grand

This store did not open.

Beaumont )  
Port Arthur )  
Port Arthur )  
(7-26-55)

643 Orleans Street  
Scuddy's Shoe Store, 1936 - 9th Street  
431 Proctor

These Scuddy's stores were never actually operated as franchise stores in accordance with the Franchise Program. They were removed from the program by mutual assent between the owner and the manager of Brown's Franchise Division.

Graham  
(4-15-57)

Stones Shoe Store, 505 W. 4th Street

This store was sold.

Lubbock  
(12-31-56)

Rodgers Shoes, Inc., 1306 Broadway

This store closed.

San Antonio  
(2-21-57)

Vernon's Shoes

This store never did open.

Texarkana  
(8-19-57)

Mathison Shoe Store, 206 W. Broad

This store was sold.

Wichita Falls  
(8-22-55)

Jones Shoe Store, Inc., 715 Eighth St.

This store closed because the lease expired and could not be renewed.

Waco  
(2-21-57)

Binns Bootery, 600 Austin Ave.

This store closed. It went into bankruptcy.



Irrinia

Winchester  
(2-28-57)

Stroder's Valley Shoe Salon, 179 N. Landown St.

This store was closed.

Washington

Moses Lake  
(3-14-55)

Chases Shoe Store, 117 E. Broadway

This store was under capitalized which made its purchases from Brown in a small volume and created a credit problem. Transferred to regular account and finally dropped because of poor credit.

Pullman  
(10-8-57)

Schmitz Shoes, 131 Main Street

Purchases from Brown decreased to a small volume. Customer was a credit problem. He increased his purchases of shoe lines other than Brown in order to obtain easier credit terms. Some of these other lines were in conflict with Brown lines. Transferred to regular account and later stopped purchasing altogether.

Puyallup  
(8-1-56)

Anderson Shoe Store

This store was sold.

Seattle  
(1-1-57)

Dahl's #2 Shoe Store, 4507 University Way

Customer requested removal from franchise program. Not transferred to regular account because customer then used store for a place to sell shoes bought in volume as "closeouts".

Seattle  
(4-3-57)

Roblee Shoe Store

This store became insolvent and Brown lost money then due. Store closed.

Tacoma  
(4-3-57)

Lundquist Lilly Shoe Department

The store closed due to insolvency.

West Virginia

Point Pleasant  
(7-30-56)

Shoe Center, Inc.

Small volume of purchases from Brown and did not submit monthly reports. Transferred to regular account and remains a customer.

Wisconsin

Antigo  
(3-11-55)

B & M Bootery

This company was removed from the franchise program for failure to submit monthly reports, general lack of cooperation with the program, and handling shoes which conflicted with Brown shoes. The company returned to the franchise program in April, 1955.

Wisconsin (Cont.)

Chippewa Falls)  
 Eau Claire )  
 Marshfield )  
 (2-8-35)

Colbert Shoes

Stores did not submit monthly reports. They also had shoes which conflicted with Brown shoes. Transferred regular account and remains a customer.

Green Bay  
 (8-12-57)

L. M. Breitenbach Shoe Department, c/o Newmans

This department was closed.

Platteville  
 (2-1-56)

Gills Shoe Store, 28 Main St.

This store was sold.

To: BROWN FRANCHISE DIVISION Report No. \_\_\_\_\_  
Field Representative's Report Date \_\_\_\_\_

To: Curtis FROM: Bill MacDonald.

Store Name Alexander's Sice Store Mgr. or Person Contacted:

City & State Cambridge, Gto. Mike and Bob Alexander.

Date Call Made 8-26-57 Date Last Call Made First

Purpose of Call: Merchandising

### IMPORTANT ITEMS TO CHECK

Order File Checked----- Yes ☒ No \_\_\_\_\_  
Monthly Reports Current----- Yes \_\_\_\_\_ No ☒ If not, explain reason in report.  
Cash Discounts Taken----- Yes ☒ No \_\_\_\_\_ If not, explain reason in report.  
Using OTB and Sales Plan----- Yes \_\_\_\_\_ No Only partially  
Interior Displays Adequate- Yes ☒ No \_\_\_\_\_  
Window Displays Satisfactory--- Yes ☒ No \_\_\_\_\_

### Physical Appearances:

Front-I--- Satisfactory ☒ Needs Remodeling \_\_\_\_\_  
Interior--- Satisfactory ☒ Needs Remodeling \_\_\_\_\_

Sales Personnel----- Good ☒ Fair \_\_\_\_\_ Poor \_\_\_\_\_

Last Year's Volume:\$ \_\_\_\_\_ This Year's Increase To Date July \$ 301.00

This Year's Loss To Date \_\_\_\_\_ \$ \_\_\_\_\_

\*(Month)

(\*Indicate Through What Month)

ENCOURAGE CONCENTRATION ON B.S.C. LINES AND ELIMINATION OF CONFLICTING LINES

## Field Representative's Report

Page 3

## OBSERVATIONS--ANALYSES--RECOMMENDATIONS--ACCOMPLISHMENTS -- (Explain in Detail)

This store, while on Franchise, uses our system only on a partial basis, and at the time of this contact, reports had only been completed through May. Bob Alexander keeps these reports, states he has been away on vacation, and since returning from same, had not had an opportunity to bring the figures up to date. Only the partial detail on the reports are maintained, the store having an accountant prepare the financial statement, supposedly on a monthly basis. The figures quoted in this report, are those obtained from available records in the store, and are as near accurate as we could obtain.

The stores volume to date is approximately \$47,000 through July, showing a slight increase of \$300.00 over the same period of a year ago. The store is working out of an overstocked condition that has existed for some time, and while the inventory figure of \$45,000 is in excess of that shown for the same period a year ago, it does not represent the true picture. The inventory figure shown a year ago, represented the value of stock, after depreciation had been taken. This year's figure does not show the depreciation that has actually been taken, but not applied against the inventory. Bob Alexander tells me he has taken around \$6,000 in markdowns since the first of the year, which, had it been applied, would show the actual inventory figure at this time as \$39,000. Depreciation has not been taken into consideration upon the advice of his accountant.

The store will do \$170,000 this year, and this volume based on a two time turn would warrant an average inventory of \$30,000, and taking into consideration this is the peak period, the inventory is not in too bad a condition. Definite progress is being made in bringing the inventory in line.

Outside lines were analyzed, and the unprofitable performance of these lines pointed out to the management. One line of ladies shoes that was bought in 8 patterns last spring, was cut to 4 patterns for the Fall buy, and will be reduced even further for next Spring's buy.

Management has made the request that I return in time to prepare a Spring Open-to-Buy, and Dollar Bying Guide, stating they feel badly in need of this service. Bob Alexander said he would make a sincere effort to render our reports on a complete basis, when I set him up properly after inventory.

Bob Sullivan, Life Stride salesman was present during this contact, and was helpful and very cooperative.

Report No. 3148  
 Date March 14, 1958

Field Representative's Report  
 T. R. CURTIS FROM: BOB TAYLOR  
 Store Name NOLAN'S Mgr. or Person Contacted:  
 City & State AUBURN, N. Y. CLARENCE NOLAN  
 Date Call Made 3/ 14/ 58 Date Last Call Made FIRST

Purpose of Call: Get acquainted call and to talk about replacing  
Piancees with Life Stride shoes

# IMPORTANT ITEMS TO CHECK

Order File Checked----- Yes \_\_\_\_\_ No \_\_\_\_\_  
 Monthly Reports Current----- Yes \_\_\_\_\_ No X If not, explain reason in report.  
 Cash Discounts Taken----- Yes X No \_\_\_\_\_ If not, explain reason in report.  
 Selling OTB and Sales Plan----- Yes \_\_\_\_\_ No \_\_\_\_\_  
 Interior Displays Adequate- Yes X No \_\_\_\_\_  
 Window Displays Satisfactory--- Yes X No \_\_\_\_\_

## Physical Appearance:

Front----- Satisfactory X Needs Remodeling X  
 Interior--- Satisfactory X Needs Remodeling \_\_\_\_\_

Sales Personnel----- Good X Fair \_\_\_\_\_ Poor \_\_\_\_\_

Last Year's Volume: \$ \_\_\_\_\_ This Year's Increase To Date \_\_\_\_\_ \$ \_\_\_\_\_

Reporting store This Year's Loss To Date \_\_\_\_\_ \$ \_\_\_\_\_  
 \* (Month) \_\_\_\_\_  
 \* (Month) \_\_\_\_\_

(\*Indicate Through What Month)

ENCOURAGE CONCENTRATION ON B.S.C. LINES AND ELIMINATION OF CONFLICTING LINES

Field Representative's R 3148

Nolan  
Auburn, N.Y.

Page 3

OBSERVATIONS--ANALYSES--RECOMMENDATIONS--ACCOMPLISHMENTS -- (Explain in Detail)

The only problem in this store, in-so-far as we are concerned, is the presence of <sup>an</sup> out side line of shoes. Tom and I talked with Clarence about this and he agreed to give the Life Stride serious consideration before buying next season. Apparently he was not aware of the strength of Life Strides ~~xxxx~~ and the strong position it holds in the stores.

I will do everything possible to get this other line out of the store.

(Frances)

fat.



[fol. 111E]

## COMMISSION EXHIBIT 32

September 25, 1958.

Max Holt

Re: Mathieu's Shoe Store, Greenfield, Massachusetts

I have your recent Field Report in which you explain that this store has not operated as a Franchise Unit since George Mathieu acquired it and that if his thinking cannot be changed, you recommend we discontinue the account as a Franchise Unit.

Max, when you say that this store is not operated as a Franchise Store, are you referring to the fact that our record system is not being used, or are you referring to other phases of the operation?

If it is the fact that our bookkeeping system is not being used, I do not think we should discontinue the account out of our division just for this reason.

As you know, there are many of the accounts in your territory which are not using our complete record system and I do not think it is advisable to be discontinuing accounts for this reason. A lot of these accounts were accepted on the basis that it would not be necessary for them to use our bookkeeping system. Of course, in the future when a new store is set up we definitely want our complete bookkeeping and merchandising system installed.

Tom Curtis, Franchise Division.

TC:LB

## COMMISSION EXHIBIT 33

September 27, 1958.

Tom Curtis

Re: Matheius Shoes, Greenfield, Mass.

Dear Tom:

Tom the reasoning in regards to the above account was based on him having too many lines in the store. Namely, Fiancees, Town & Country, conflicting price-wise with ours. [fol. 112E] I haven't had an opportunity to have a discussion with Mr. Mathieu, as I only met him briefly on my first visit there and then he was very cold and curt. The boys in the store said he and MacEnaney had some differences of opinion when he bought the store, and he has had no use for Franchise from then.

He has another store in Southbridge, Mass. where he devotes his time too and I will have to see him there, in order to get enough time from him to soften him up.

I didn't mean for my report to convey that I was recommending he be dropped when as yet I haven't had the opportunity to try to overcome his wrong impressions.

Sincerely, —, —.

By To: BROWN FRANCHISE DIVISION Report No. 6138  
Field Representative's Report Date June 14, 1958

By: Tom Curtis FROM: Bob Taylor  
Core Name SHADDOCK'S Mgr. or Person Contacted:  
City & State CANANDAIGUA, N.Y. JACK SHADDOCK  
Date Call Made June 10, 1958 Date Last Call Made June 2, 1958  
Purpose of Call: Inventory and adjustment sheets

IMPORTANT ITEMS TO CHECK

Order File Checked Yes No ☒  
Monthly Reports Current Yes No ☒ If not, explain reason in report.  
Cash Discounts Taken Yes ☒ No If not, explain reason in report.  
Using OTB and Sales Plan Yes No ☒  
Interior Displays Adequate-----Yes ☒ No  
Window Displays Satisfactory Yes ☒ No  
Physical Appearance:

Front-----Satisfactory ☒ Needs Remodeling

Interior-----Satisfactory ☒ Needs Remodeling

Sales Personnel-----Good ☒ Fair Poor

Last Year's Volume: \$ 90,000 This Year's Increase to Date \$

\*(Month)

This Year's Loss To Date \$

\*(Month)

(\*Indicate Through What Month)

ENCOURAGE CONCENTRATION ON B.S.C. LINES AND ELIMINATION OF CONFLICTING LINES

698

[fol: 114E]

Commission Exhibit 34-B.1

Field Representative's Report  
6138shaddock's  
canandaigua, n.y.

Page -2-

OBSERVATIONS--ANALYSES--RECOMMENDATIONS--ACCOMPLISHMENTS--(Explain in Detail)

This inventory when completed, showed that it amounted to slightly more than \$ 45,000. This included a large shipment of Rubber Footwear scheduled for this fall.

The figures also revealed that the inventory was heavy by \$ 12,000 to \$ 15,000 for their normal requirements. The reason for this, according to Jack, was a drop in volume by \$ 10,000 under the previous year, and his inability to secure good salespeople. Jack now has a young man, a former employee, who is a good salesman and who will also be a big help to Jack with his help in buying and stock control.

A good portion of Jack's inventory represents spot shoes from outside lines and in talking with Jack he admits that these represent a small percentage of his sales andxxxxx and are not needed. In most cases they amount to overlapping patterns. Three lines of shoes will xxx be eliminated this coming season.

This inventory also shows that fringe shoes are bought in excess and not enough attention to the middle- of- x the- road patterns where sizes are important. Jack showed a great willingness to discuss these problems and an equal willingness to correct the situation.

It was suggested to Jack that with his present volume, he could use one more salesperson, possibly a lady, one who could not only sell, but who could take care of the mailing list and keep it up to date. Also to make it possible for two people to be on the floor during lunch hours. Unlike most stores, this store is understaffed."

The reports are being prepared and will all be in your hands shortly. These monthly reports, Jack says, will be kept up-to-date from now on.

Bob

By To: BROWN FRANCHISE DIVISION Report No. 7168  
 Date: Field Representative's Report Date  
 Name: Tom Curtis FROM: Bob Taylor  
 Store Name Whites Shoe Store Mgr or Person Contacted:  
 City & State Lancaster, N. Hampshire Mrs. Doris White  
 Date Call Made July 16, 1958 Date Last Call Made 5/27/58

Purpose of Call: To check inventory and advise sales procedure  
for summer clearance

#### IMPORTANT ITEMS TO CHECK

Order File Checked-----Yes      No x  
 Monthly Reports Current-----Yes      No x If not, explain reason in  
 report.  
 Cash Discounts Taken-----Yes      No x If not, explain reason in  
 report.  
 Selling OTB and Sales Plan-----Yes      No x  
 Store Interior Displays Adequate-Yes x No       
 Window Displays Satisfactory---Yes x No     

#### Physical Appearance:

Front-----Satisfactory x Needs Remodeling       
 Interior      Satisfactory x Needs Remodeling     

Sales Personnel-----Good x Fair      Poor     

Last Year's Volume: \$ 34,000 This Year's Increase to Date      \$  
no reports This Year's Loss To Date      \$  
 \*(Month) \*(Month)

(\*Indicate Through What Month)

COURAGE CONCENTRATION ON B.S.C. LINES AND ELIMINATION OF CONFLICTING LINES

700

[fol. 116E]

Commission Exhibit 35-B.

Whites  
Lancaster, N. H.

Field Representative's Report 7158

Page -2-

OBSERVATIONS--ANALYSES--RECOMMENDATIONS--ACCOMPLISHMENTS--(Explain in Detail)

Dear Dick,  
Late Monday afternoon, after talking with you on the phone, everything was shaping up nicely at Carbones, in Gouverneur, I decided to sandwich this call in as I had promised Mrs. White to see her.

Here are some of the things accomplished.

1. Went over entire spring and summer shoes line to be put on sale and established prices and shoes to be moved.
2. Discussed proper methods of putting on a successful sale.
3. Established need for running inventory according to classification, heel height and colors. (There has never been a system used in this store because those folks bought the store and they were totally unfamiliar with the shoe business and no one took the time to tell them any better.)
3. Discussed with Mrs. White the importance (again) of keeping the pairage record and getting her reports in on time.
4. Spent time going over her books and advising her on how to make certain entries so that her books would reflect the proper expenses occurred in the business.
5. Again, the importance of reducing her inventory and putting her buying on a mail-order basis was discussed and she is in complete agreement.
6. Outside lines were discussed and she also agrees that most are not necessary and will be discontinued. This will eliminate many over-lapping patterns and types that she does not need in this low-volume store.

If Mrs. White will carry through on the recommendations made to her, she will eventually work out of her over-bought condition and become current with her bills. It had been my intention to take a complete inventory. However, the inventory is so mixed up it would take a week or more. The Whites say that they can find the shoes so sometime later, after they have reorganized and have sold a good percentage of the shoes now on hand, an inventory will be made. Right now it is useless to spend the time it would require. I say this because the selling floor is small and three-fourths of the shoes are in the basement which really makes it a tough job.

Bob Lapin is aware that Mrs. White is to buy in small quantities on a fill-in basis.

Bob



June 27, 1958

Re: George Croker

From: Tom Curtis

Re: Shugart's Shoes, Clearfield & Philipsburg, Pennsylvania

This week our Buster Brown sales representative, Frank Cirra, called me and among various things discussed, he advised that he had just learned that Orville Shugart plans to buy American Girl line for Fall.

George, let's get into this immediately and head this off before the shoes are received in the store. As you know, if the American Girl line is purchased, this will not be in keeping with our Franchise Program.

C:LB

Copy To:

BROWN FRANCHISE DIVISION

Report No. 5128

Field Representative's Report

Date May 14, 1958

TO: Tom Curtis

FROM: Bob Taylor

Store Name Green's Dept. Store

Mgr. or Person Contacted:

City &amp; State Middletown, New York

John Ward

Date Call Made May 12, 1958

Date Last Call Made Feb. 12, 1958

Purpose of Call: Pairage- Open To Buy Guide

IMPORTANT ITEMS TO CHECKOn Order File Checked— Yes ☒ No ☐Monthly Reports Current— Yes ☒ No ☐ If not, explain reason in reportCash Discounts Taken— Yes ☒ No ☐ If not, explain reason in reportUsing OTB and Sales Plan— Yes ☒ No ☐Are Interior Displays Adequate— Yes ☒ No ☐Window Displays Satisfactory— Yes ☒ No ☐

## Physical Appearance:

Front— Satisfactory ☒ Needs Remodeling ☐Interior— Satisfactory ☒ Needs Remodeling ☐Sales Personnel— Good ☒ Fair ☐ Poor ☐Last Year's Volume: \$ \_\_\_\_\_ This Year's Increase To Date \$ \_\_\_\_\_  
e(Month)

New Store

This Year's Loss To Date \$ \_\_\_\_\_  
e(Month)

(Indicate Through What Month)

ENCOURAGE CONCENTRATION ON P.S.C. LINES AND ELIMINATION OF CONFLICTING LINES

Field Representative's Report 5128

Green's Dept Store  
Middletown, N. Y.

Page -2-

OBSERVATIONS--ANALYSES--RECOMMENDATIONS--ACCOMPLISHMENTS--(Explain in  
Detail)

Since joining the Franchise program last August 1957, this department has shown continued progress and the owner and manager are satisfied that the business should continue to grow.

Because of the lines previously carried in womens shoes, this department has been weak in style patterns and needs to develop and promote the Naturalizer and Life Stride lines to capture this business. This was discussed and for fall, they plan to use our national promotions and more local advertising.

It was decided that the T.O. for these two lines would not be figured higher than 1.5 to afford them more shoes and correct it to a higher figure as business improved. It was noted however, that the spring sales on these two lines were much improved over last falls sales, indicating that in another year they should do very well.

In the Buster Brown line the present turnover is 3.3. The C T B was planned at 2. because it was felt that sales were being missed or shoes being misfitted due to lack of inventory.

Sales in outside lines, that seemed important to them on my last call, show that they are not needed and for the most part, will not be carried in the future. The excess inventory will be reduced by the elimination of these lines.

The addition of a new city parking lot next to this store should also help to increase the volume here.

Bob

704

[fol. 120E]

## COMMISSION EXHIBIT 38-A.

Copy To: BROWN FRANCHISE DIVISION Report No. 244  
Bob Lapin Field Representative's Report Date April 26, 1958

TO: Franchise Division FROM: T. R. Forgan  
 Store Name Ward's Bootery Mgr. or Person Contacted:  
City & State Chanute, Kansas Bob Ward  
 Date Call Made April 24, 1958 Date Last Call Made \_\_\_\_\_

Purpose of Call: Open-to-buy

IMPORTANT ITEMS TO CHECK

On Order File Checked----- Yes X No \_\_\_\_\_  
 Monthly Reports Current----- Yes \_\_\_\_\_ No X If not, explain reason in report.  
 Cash Discounts Taken----- Yes \_\_\_\_\_ No X If not, explain reason in report.  
 Using OTB and Sales Plan----- Yes X No \_\_\_\_\_  
 Are Interior Displays Adequate- Yes X No \_\_\_\_\_  
 Window Displays Satisfactory--- Yes X No \_\_\_\_\_

## Physical Appearance:

Front----- Satisfactory X Needs Remodeling \_\_\_\_\_  
 Interior-- Satisfactory X Needs Remodeling \_\_\_\_\_

Sales Personnel----- Good \_\_\_\_\_ Fair X Poor \_\_\_\_\_

Last Year's Volume: \$47,759.00 This Year's Increase To Date March \$720.00  
 \*(Month)

This Year's Loss To Date \$ \_\_\_\_\_  
 \*(Month)

(\*Indicate Through What Month)

ENCOURAGE CONCENTRATION ON B&C LINES AND ELIMINATION OF CONFLICTING LINES

Old Representative's Report

Page -2-

OBSERVATIONS--ANALYSES--RECOMMENDATIONS--ACCOMPLISHMENTS -- (Explain in Detail)

Attached please find the pairage open-to-buy and operating guide covering the period from April 1st to December 31, 1958 for Ward's Bootery.

For the first three months they are ahead in sales by \$700.00 however when April figures are in they will be behind by about \$200.00. In planning his sales for the balance of 1958 we planned the same volume as last years with the exception of December. It is our hope that an all out sale, such as we have had for the past two years, will not be necessary this year.

His inventory is about \$7000.00 lower than it was at this time last year however his indebtedness to the trade, as of March 31st, is still too high, \$6633.00. It is going to take him until sometime in August to get current.

In August last year he received \$7000.00 worth of shoes and this really put him in the hole. For the months of August, September and October last year he received \$13,000.00 worth of merchandise and this year we plan on receiving only \$10,000.00. Even by reducing his purchases for these three months by \$3000.00 he is still going to have a little trouble in earning discounts.

The salary and miscellaneous expenses for this store have always been high. He has a full time lady and a boy that works part-time. I recommended that he let the boy go as their volume does not justify the extra help. This will be done this week-end. I also cautioned him again to place a better control on his miscellaneous expenses.

In addition to purchases of \$3000.00 that he has received this month, he has another \$1500.00 on order. Some of these shoes were due in March so he has revised these orders and it is possible that he will be in a better financial condition at the end of July than the plan shows.

He has already discontinued Heydays and will drop Jolene Williams, and Show Offs for fall. He is concentrating more on our lines each season.

Every other trip to this store Bob Ward decides to sell the store. This was the trip for this discussion. This time however he was more determined to sell than on any other call. I told him that if this was the way he felt that the thing for

706 [fol. 122E]

## COMMISSION EXHIBIT 39-A.

Copy To:

BROWN FRANCHISE DIVISION

Report No. 242

Bob Lamin

Field Representative's Report

Date April 22, 1958

TO: Franchise Division

FROM: T. R. Forgan

Store Name Junior Boot Shop

Mgr. or Person Contacted:

City &amp; State Springfield, Mo.

Bill O'Neill

Date Call Made April 21, 1958

Date Last Call Made

Purpose of Call: Open-to-buy

IMPORTANT ITEMS TO CHECKOn Order File Checked----- Yes ☒ No ☐Monthly Reports Current----- Yes ☒ No ☐ If not, explain reason in reportCash Discounts Taken----- Yes ☒ No ☐ If not, explain reason in reportUsing OTB and Sales Plan----- Yes ☒ No ☐Are Interior Displays Adequate- Yes ☒ No ☐Window Displays Satisfactory----- Yes ☒ No ☐

Physical Appearance:

Front----- Satisfactory ☒ Needs Remodeling ☐Interior----- Satisfactory ☒ Needs Remodeling ☐Sales Personnel----- Good ☐ Fair ☒ Poor ☐

Last Year's Volume: \$ 27,233.18 This Year's Increase To Date March \$

\*(Month)

This Year's Loss To Date \$

\*(Month)

(\*Indicate Through What Month)

EMPHASIS ON CONCENTRATION ON B.S.C. LINES AND ELIMINATION OF CONFLICTING LINES



old Representative's Report

Page -2-

OBSERVATIONS--ANALYSES--RECOMMENDATIONS--ACCOMPLISHMENTS -- (Explain in Detail)

For the first three months of 1958 this store is showing a 50% increase. They will go over April figures of last year by 10% and for the first quarter they will show an increase of 30%. The attached operating guide and open-to-buy in pairs was based on a 30% increase for the balance of the summer and then we dropped it down to 20%.

The loan of \$1000.00, that is shown on the operating guide, will be due July 31st and they plan on renewing it at that time. This store is still undercapitalized and additional capital will be needed in September. Mr. O'Neill does not believe that his uncle will be willing to invest more money at that time but he will get a short-term note from the bank.

Concentration on fewer lines and less patterns was discussed and will be applied more this fall. Dubs are to be discontinued and Shelby Arch type shoes are to be replaced with Proper-tail.

The importance of buying only stock shoes was also discussed and he agreed that this should be done.

Because of the increased volume his expenses are falling more in line percentage wise. His salaries are still too high but he feels that he cannot operate for less. I cautioned him to hold his purchases down to the bare minimum between now and July in order to reduce his inventory and be in a better financial position going into fall. His inventory will be at least \$1500.00 heavy at the close of April.

Based on our plan, which Bill O'Neill and I both feel is realistic, this store will do \$34,000.00 this year compared to \$27,233.00 last year.

CC: Mr. Bob Lapin

February 18, 1958

Mr. T. R. Forgan

Re: Lloyd's Shoes  
Wichita, Kansas, Great Bend, Kansas

Here is a serious situation that I think requires a trip for you in the near future. Both of these stores continue to show steady declines in purchases of Brown Shoe Company lines, in spite of an increase in total retail volume.

I understand that he has put in Great Northern shoes that directly conflict with our Pedwins.

I think it is time for a forthright discussion with Mr. Bump on what we attempt to accomplish with dealers who operate their business on our Franchise Program. If he does not see the wisdom of going along with the thought of operating these stores more progressively, avoid directly conflicting purchases, then I think we have no other alternative than to ask him to withdraw from the program.

According to our records you have not called on these stores since May, 1957, T. R., and if it is possible to have Lloyd Bump go along with some of your good recommendations then I feel that you are going to have to call on these stores more often so as to keep in closer contact.

I know that you want to do everything possible to avoid losing a \$55,000 to \$60,000 in shipments into your territory, so let's give this a good strong effort and see what can be accomplished.

Please let me hear from you in detail after you visit with Mr. Bump.

Dick Johnston, Franchise Stores Division.

JRJ:cl

## BROWN FRANCHISE DIVISION

Report No. 221

## Field Representative's Report

Date February 28, 1958To Dick JohnstonFROM: T. R. ForganStore Name Lloyd's Shoes

Mgr. or Person Contacted:

City & State Wichita, KansasLloyd BumpDate Call Made February 28, 1958

Date Last Call Made \_\_\_\_\_

Purpose of Call: To discuss decrease in our shipments into both  
of Mr. Bump's stores.

IMPORTANT ITEMS TO CHECKOrder File Checked \_\_\_\_\_ Yes X No \_\_\_\_\_Monthly Reports Current \_\_\_\_\_ Yes X No \_\_\_\_\_ If not, explain reason in report.Cash Discounts Taken \_\_\_\_\_ Yes \_\_\_\_\_ No X If not, explain reason in report.Following OTB and Sales Plan \_\_\_\_\_ Yes \_\_\_\_\_ No XStore Interior Displays Adequate- Yes X No \_\_\_\_\_Window Displays Satisfactory- Yes X No \_\_\_\_\_

## Physical Appearance:

Front \_\_\_\_\_ Satisfactory X Needs Remodeling \_\_\_\_\_Interior \_\_\_\_\_ Satisfactory X Needs Remodeling \_\_\_\_\_Sales Personnel \_\_\_\_\_ Good \_\_\_\_\_ Fair X Poor \_\_\_\_\_Last Year's Volume: \$ 66,124.00 This Year's Increase To Date Jan \$ 105.00

\*(Month)

This Year's Loss To Date \_\_\_\_\_

\*(Month)

(\*Indicate Through What Month)

ENCOURAGE COOPERATION ON A.S.C. LINES AND ELIMINATION OF CONFLICTING LINES

## Sole Representative's Report

Page -2-

## OBSERVATIONS--ANALYSIS--RECOMMENDATIONS--ACCOMPLISHMENTS -- (Explain in Detail)

There are several reasons why our shipments have fallen off in these two stores and conflicting lines account for a very small per cent of it. In the ladies lines the biggest loss is because Life Strides were discontinued in both stores. I personally believe the Great Bend store could sell these shoes but I haven't been able to get through to Lloyd on this. The Wichita store does not have the location or traffic necessary to sell style shoes. This change cost us better than \$8000.00 in shipments. He has not replaced Life Strides with another line. He does have a few Miracle Tread mama shoes in addition to Air Steps.

The children shoe business at the Wichita store has really slipped. He had the merchandise but he just didn't get the young mother into this store. He could have done better had he used birthday cards, reminder cards, and gone out after the business. Whether he could have done enough business to justify the inventory is debatable. Anyway, now he has transferred all of his children shoes to Great Bend. Last year when the Dodge City store closed most of the shoes were transferred to Great Bend and a large part of these were Busters. As a result of this transfer Busters shipments last year fell off almost \$5000.00 and now with the transfer from Wichita to Great Bend, Buster shipments will again be effected.

The Dodge City store closing not only hurt Busters shipments but was felt by all divisions. Basic shoes were pulled out before the sale and transferred to the other stores.

He has bought some \$3.00 flats for summer. When I questioned him about this he told me that the salesman did not call on him and that he didn't know what the Robin Hood division had. That he did not get any price list, catalog or anything from that division. I personally believe it is a clash of personalities between the Robin Hood salesman and Lloyd. I have passed this information on to the salesman and he has assured me that he would call on Lloyd. He said he has called on Lloyd before but was unable to get an order out of him.

Lloyd gave me the following reasons for putting in the Great Northern line.

1. Pedvins were priced to close to Robless.
2. He needs some shoes to sell at \$8.95
3. He can get a better markup on Great Northern. (He pays \$5.05 & \$5.35 a pair).
4. His customers want leather soles.

To you and to me none of these reasons make sense, but to Lloyd Bump they do. I am sure you have met Lloyd and know that he is a pretty hard headed man.

Dick, I don't want to lose these two stores but neither do I like to see our lines kicked around. I would like to keep them on our program for another season and see if I can't get Robin Hood back in both of these stores. Also I have some of our Life Strides back in at Great Bend.

March 11, 1958.

T. R. Forgan

Re: Bump Shoe Stores  
Wichita and Great Bend, Kansas

I have been out of the city for the past ten days . . .  
since the delay in acknowledging yours of February 28th  
regarding your visit to the above stores.

I know we can't do too much about the shipments to  
these stores where it involves absorbing certain merchan-  
dise from our lines when the Dodge City Store was closed.  
We certainly have to live with this situation until Mr.  
Bump is able to work these shoes out. That is, of course,  
he is not going to hold on to them from now until eter-  
nity.

The one very important point that concerns me, T. R., is  
that you say he can get a better mark up on men's Great  
Northern shoes and that his customers want leather soles.  
If this be the case and he is determined to continue to  
carry Great Northern instead of Pedwin, then we have no  
other alternative than to ask him to withdraw from the  
Franchise Program.

You say you would like to keep these stores on the  
program for another season and see if we can't get Robin  
Hood and Pedwin back in both of these stores.

While you give us Lloyd Bump's expression regarding  
Great Northern you say nothing as to whether or not he  
will replace these shoes with Pedwins starting with the  
Fall Season.

Please let me hear from you so that my letter to him  
on the subject can be guided accordingly.

It just looks to me, T. R., as though these stores are  
drifting farther and farther away from our lines and the  
longer we live with the situation, the worse it might get.

Dick Johnston, Franchise Stores Division.

RJ:c]

712 [fol. 128E]

## COMMISSION EXHIBIT 43-A.

Copy To:

BROWN FRANCHISE DIVISION

Report No. 157

Field Representative's Report Date November 9, 1957

TO: Franchise Division

FROM: T.R. Forgan

Store Name Brungardt Shoes

Mgr. or Person Contacted:

City &amp; State Pratt, Kansas

Tom Brungardt

Date Call Made November 8, 1957

Date Last Call Made

Purpose of Call: General Merchandising

## IMPORTANT ITEMS TO CHECK

On Order File Checked----- Yes X NoMonthly Reports Current----- Yes X No If not, explain reason in report.Cash Discounts Taken----- Yes X No If not, explain reason in report.Using OTB and Sales Plan----- Yes No XAre Interior Displays Adequate- Yes No XWindow Displays Satisfactory--- Yes X No

Physical Appearance:

Front----- Satisfactory X Needs RemodelingInterior-- Satisfactory X Needs RemodelingSales Personnel----- Good Fair X Poor

Last Year's Volume: \$58,561.00 This Year's Increase To Date \$

\*(Month)

This Year's Loss To Date October \$834.00

\*(Month)

(\*Indicate Through What Month)

ENCOURAGE CONCENTRATION ON B.S.C. LINES AND ELIMINATION OF CONFLICTING LINES



Field Representative's Report

Page -2-

OBSERVATIONS--ANALYSES--RECOMMENDATIONS--ACCOMPLISHMENTS -- (Explain in Detail)

This store was behind in sales for the first four months of the year however they had a \$500.00 increase for May and are \$142.00 ahead of last years sales going into June.

Tom is very optimistic about fall business and is shooting for a \$5000.00 increase.

Concentration on fewer lines was discussed and it was decided to discontinue Golo dress flats and Grinnell sports.

Life Strides have been bought for fall for the first time in several seasons. They had been discontinued several seasons back because of their inability to ship and Tom said what they did ship was late. Another thing that I am sure had some bearing on the discontinuing of this line was personalities. Personalities do clash and they did in this case. I assured Tom that Life Stride deliveries had been excellent the past several seasons and that the shoes he bought would be delivered, and on time. His opening order was for 170 pairs.

Tom does an excellent job of merchandising and his windows and interior displays are always effective. His monthly reports are always up to date and filled out completely. He studies his reports thoroughly and derives many benefits from them.

Birthday cards are sent out daily and in all Tom does a very good job of managing this store.

Copy To:

BROWN FRANCHISE DIVISION

Report No. 116

Field Representative's Report

Date June 5, 1957TO: Franchise DivisionFROM: T. R. ForganStore Name Brungardt's

Mgr. or Person Contacted:

City & State Pratt, KansasTom BrungardtDate Call Made June 4, 1957

Date Last Call Made \_\_\_\_\_

Purpose of Call: General MerchandisingIMPORTANT ITEMS TO CHECKOn Order File Checked \_\_\_\_\_ Yes x No \_\_\_\_\_Monthly Reports Current \_\_\_\_\_ Yes x No \_\_\_\_\_ If not, explain reason in repCash Discounts Taken \_\_\_\_\_ Yes x No \_\_\_\_\_ If not, explain reason in repUsing OTB and Sales Plan \_\_\_\_\_ Yes \_\_\_\_\_ No xAre Interior Displays Adequate- Yes x No \_\_\_\_\_Window Displays Satisfactory- Yes x No \_\_\_\_\_

## Physical Appearance:

Front- Satisfactory x Needs Remodeling \_\_\_\_\_Interior- Satisfactory x Needs Remodeling \_\_\_\_\_Sales Personnel- Good x Fair \_\_\_\_\_ Poor \_\_\_\_\_Last Year's Volume: \$ 58,561.00 This Year's Decrease To Date May \$ 142.00

\*(Month)

This Year's Loss To Date

\*(Month)

(\*Indicate Through What Month)

ENCOURAGE CONCENTRATION ON E.S.C. LINES AND ELIMINATION OF CONFLICTING LINES

Field Representative's Report

Page -2-

OBSERVATIONS--ANALYSES--RECOMMENDATIONS--ACCOMPLISHMENTS -- (Explain in Detail)

This store was behind in sales for the first four months of the year however they had a \$500.00 increase for May and are \$142.00 ahead of last years sales going into June.

Tom is very optimistic about fall business and is shooting for a \$5000.00 increase.

Concentration on fewer lines was discussed and it was decided to discontinue Golo dress flats and Grinnell sports.

Life Strides have been bought for fall for the first time in several seasons. They had been discontinued several seasons back because of their inability to ship and Tom said what they did ship was late. Another thing that I am sure had some bearing on the discontinuing of this line was personalities. Personalities do clash and they did in this case. I assured Tom that Life Stride deliveries had been excellent the past several seasons and that the shoes he bought would be delivered, and on time. His opening order was for 170 pairs.

Tom does an excellent job of merchandising and his windows and interior displays are always effective. His monthly reports are always up to date and filled out completely. He studies his reports thoroughly and derives many benefits from them.

Birthday cards are sent out daily and in all Tom does a very good job of managing this store.

(Handwritten.)

Prague Shoe Company  
New London, Conn.  
(New Store)

Brown Franchise Division  
Inter-Company Correspondence.

Date: Feb. 4, 1957

Re: New London Agreement

To: Lou Carroll

From: McEnaney

I am returning the agreements for Prague's New London store. Westport needed to be added due to the elimination of some classifications from the Life Stride line. Various Vogues are still planned to be carried starting in the summer season so they should be included. He has been urging us to allow him to carry "Town and Country" which is profitable for him in Willimantic and has been refused. I am leaving Risque in as a cushion for this problem. They will have to settle that problem.

## COMMISSION EXHIBIT 46.

Brown Franchise Division  
Inter-Company Correspondence.

Date: May 21, 1957

Copy To: Bob Lapin

Re: McCrum-Maupin  
Ft. Scott, Kansas

To: Dick Johnston

From: T. R. Forgan

I arranged a meeting with McCrum and Maupin where I was at the Kansas City shoe show.

I understand that Glen Maupin called you last week and that you agreed to go along with them for another season.

They assured me that they would concentrate more on  
r lines for fall. Their plans are to buy one style from  
paradise Kittens and about two styles in Arch shoes from  
her resources. They will replace Debs with Life Strides.

I am sure Glen told you, as he did me, that they are not  
le to put in additional capitol at this time. He said  
at he would be paid up in full by July 15th. I cautioned  
em not to buy too heavy on their first buy as they can  
t afford to have too many shoes coming in early. Also  
stagger their shipping dates in order to be in a better  
sition to pay for them.

I plan on seeing them again in June to see how they are  
ming along in regard to reducing their liabilities and  
ll advise you as to their progress at that time.

#### COMMISSION EXHIBIT 47.

Mr. T. R. Forgan  
Mr. Bob Lapin

May 28, 1957

Mr. Glen R. Maupin  
Crum-Maupin Shoes  
So. Main St.  
Port Scott, Kansas

Mr. Glen and Doug:

This will follow up our telephone conversation a short  
ne ago regarding your continuing on our Franchise Pro-  
am. T. R. Forgan also explains that he discussed this  
bject with you recently at the Kansas City Show. We  
e hopeful that you make a concerted effort to have your  
usiness operate on a much more profitable basis than it  
e in the past.

As circumstances are and have been recently it is not a  
estion of your having exorbitant inventories. It is a  
estion of, as Bob Lapin pointed out to you, that your  
usiness is under-capitalized to the extent that you can  
t afford to take in enough merchandise so as to make it  
ossible for you to increase your volume to where it  
ould be. One of our concerns has been that since your

718 [fol. 134E]

business has been undercapitalized that you find it necessary to buy from so many different resources that it puts you at a great disadvantage. The Credit Department not only requests that you have your Brown Shoe Company indebtedness entirely out of the way by July, but also requests that you have outside resource indebtedness out of the way to go into the Fall season.

We will review this again with you in July and unless this is possible we will have no other alternative than to ask you to withdraw from the Franchise Program at that time. We sincerely hope you will be able to get things in shape by then.

Kindest regards.

Sincerely yours, Dick Johnston, Franchise Store  
Division.

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[fol. 135E]

## COMMISSION EXHIBIT 48-A.

719

To: BROWN FRANCHISE DIVISION Report No. 146  
Franchise Division Field Representative's Report Date October 5, 1957  
 By: Bob Lapin FROM: T. R. Forgan  
 Name McCrum - Maupin Mgr. or Person Contacted:  
 City & State Ft. Scott, Kansas Glen Maupin & Doug McCrum  
 Date Call Made October 4, 1957 Date Last Call Made \_\_\_\_\_  
 Purpose of Call: Financial

IMPORTANT ITEMS TO CHECK

Order File Checked----- Yes X No \_\_\_\_\_  
 Monthly Reports Current----- Yes X No \_\_\_\_\_ If not, explain reason in report.  
 Cash Discounts Taken----- Yes \_\_\_\_\_ No X If not, explain reason in report.  
 Long OTB and Sales Plan----- Yes X No \_\_\_\_\_  
 Interior Displays Adequate- Yes X No \_\_\_\_\_  
 Window Displays Satisfactory--- Yes X No \_\_\_\_\_  
 Physical Appearance:

Front----- Satisfactory X Needs Remodeling \_\_\_\_\_  
 Interior-- Satisfactory X Needs Remodeling \_\_\_\_\_

Sales Personnel----- Good X Fair \_\_\_\_\_ Poor \_\_\_\_\_

Last Year's Volume: \$45,445.00 This Year's Increase To Date \*(Month) \$ 5,500.00  
 This Year's Loss To Date Sept. \$100.00  
 \*(Month)

(\*Indicate Through What Month)

COURAGE CONCENTRATION ON BSC LINES AND ELIMINATION OF CONFLICTING LINES

720

[fol. 136E]

Commission Exhibit 48-B

Field Representative's Report

Page -2-

ERVATIONS--ANALYSES--RECOMMENDATIONS--ACCOMPLISHMENTS -- (Explain in Detail)

I stopped in Ft. Scott and helped Glenn complete his monthly report. He mailed it Friday night, October 4th, and it should be at your desk by now. It definitely does not look good and I agree with you that they are headed for trouble.

Their indebtedness to the trade now stands at \$11,895.00 and I don't see how they can pay off more than \$7,000.00 between now and the end of the year.

We went through his on order file and he has placed orders from us for delivery in October, November, and December to the tune of \$3,000.00. In addition to our orders he has \$800.00 on order from others. \$500.00 is for house shoes, \$200.00 for boots, and \$100.00 from Deb Shoe Company. He needs the boots and house shoes but said he had already canceled the Debs and would not accept them.

If all the shoes that they have on order are shipped, I figure they will owe approximately \$8,600.00 to trade at the end of the year.

I went over this with both Glenn and Doug and showed them where they were headed unless some revisions were made immediately. Even with revising their orders they are still going to be in trouble but this would help.

Glenn assured me that he would write you in regard to his orders this week end.

I plan on returning to Ft. Scott the first of November to help them with their buying plans for spring. I have helped them with their buying plans in the past and know that they don't use the guides. I told them this time that if the plan was not followed I was not going to waste my time and theirs anymore.

[fol. 137E]

## COMMISSION EXHIBIT 49

October 8, 1957.

T. R. Forgan

Re: McCrum-Maupin, Ft. Scott, Kansas

Attached is a copy of a letter Bob Lapin has just written to this account.

In view of the fact that we seem to be getting nowhere in working with these fellows, we are not going to continue with them as a Franchise Unit. The account will be transferred to our regular Credit Department just as soon as they have their indebtedness in satisfactory condition to make the transfer.

Eliminate this store from your list for Buying Programs, and do not plan to make any further trips there for the purpose of working with them.

Tom Curtis, Franchise Division.

TC:LB

cc Bob Lapin

## COMMISSION EXHIBITS 50-A AND 50-B

cc: Mr. Bob Lapin,  
Mr. T. R. Forgan,  
Mr. Oden Prowell.

January 22, 1958.

Messrs. Douglas McCrum and Glen P. Maupin  
McCrum-Maupin Shoes  
4 S. Main  
Fort Scott, Kansas

Dear Doug and Glen:

I have just had an opportunity to review your operation for 1957. While you were able to maintain the same retail volume that you did in 1956, your inventory has increased \$3,000 and the liabilities for your business show little or

[fol. 138E] no improvement in spite of the loan you made of \$8,000 from the Small Business Administration.

During the past several years our division and the Credit department have made every possible attempt to work closely with you but with little or no results. Our Credit Department has written you periodically regarding the financial and indebtedness status of your business and I am told that you rarely acknowledge any of this correspondence.

For some reason you have not seen the wisdom in following the buying guides that you and your Field Representative work out from season to season, which puts us at a great disadvantage from the standpoint of trying to be of assistance to you.

For the above reasons and your apparent desire to disregard the many recommendations that have been made to you in the best interest of operating a profitable business, we have no other alternative than to ask you to withdraw from the Franchise Program.

According to our records you are carrying your Fire and Extended Coverage and Public Liability Insurance with Geo. D. Capen & Co. We are asking them to continue this coverage for you until February 28, 1958, so that you will have an opportunity to replace this coverage with a local insurance agent.

Your account will be transferred to the Regular Credit Ledger. The fact that your store will no longer be operating on the Franchise Program, of course, has no bearing whatsoever on the future of Brown Shoe Company Lines in your store. This decision will rest with you and the individual salesmen that are involved.

## [fol. 139E-163E] COMMISSION EXHIBIT 51

H. W. Astroth	Roble McCarty
Robert Bahn	George Montigne
W. F. Barber	H. C. Moore
Stan Bozaich	W. J. O'Rourke
J. Bradley	O. D. Prowell
Bud Bregman	Jim Quinn
Milton Bruns	Gene Roessel
R. F. Byrne	L. J. Schaefer
Lou Carroll	Scholl Mfg. Co.
Credit Files	T. F. Schroth
Tom Curtis	Fred Shore
J. Damen	Gray Simpson
A. C. Fleener	O. G. Smith
C. G. Fliegner	W. J. Stroessner
Jim Frye	R. G. Stolz
Nina Gordon	Lester A. Suhre
J. Helmbacher	Sam Webb
Mildred Herbst	Mary Ann Wendel
Walter Johnson	Hugh Winfrey
W. Koch (6).	Henry Wiswell
Bob Lapin	Helen Wolff
Eleanor Lundberg	W. B. Woosley, Jr.
Rosemary Luttrell	Frank Yerkes
C. Marshall	

January 22, 1958.

Would you please remove the following store from your list of Brown Franchise Accounts . . .

McCrum-Maupin Shoes  
4 South Main  
Fort Scott, Kansas

Please transfer this account from the Store Plan Ledger to the Regular Ledger.

Thank you.

Dick Johnston, Franchise Stores Division.

el

[fol. 164E] COMMISSION EXHIBITS 83-A AND B

(Letterhead of Brown Shoe Company.)

April 22, 1958.

Federal Trade Commission  
Kansas City Branch Office  
Room 808, Sharp Building  
18 East 11th Street  
Kansas City, Missouri

Attention: Mr. W. S. Sanger, Jr.  
Attorney-Adviser

Re Brown Shoe Company, File No. 561 0002

Gentlemen:

This is in answer to your question No. 8 in your letter of March 26, 1958.

Among the leading companies engaged in the manufacture of men's, women's, and children's shoes of comparable quality and price across the broad line of Brown's production, are International Shoe Company and General Shoe Corporation. These firms compete with Brown in many lines of shoes in numerous places in United States. In addition to these, however, there are many other shoe companies which compete nationally with one or more of Brown's lines, and a still greater number of companies competing with Brown's brands locally. The large rubber companies have increasingly, in recent years, provided [fol. 165E] severe competition for many of Brown's casual shoes and summer shoes by their styled canvas upper, rubber soled shoes for men, women, and children.

Listed on Exhibit 1 are some of the brands which compete with Brown Shoe Company brands on either a national or a local basis. This list can by no means be considered complete. In many cases the brands listed compete generally with the designated brand of Brown. In other cases, certain shoes carrying the brand listed, compete with certain shoes of the Brown brand.

In cases where the brand listed is found on a variety of types, styles, and prices of shoes, it is considered to be com-



petitive only when such type, style, and price are similar to those of the Brown brand.

We are assembling the remaining information which you requested in your letter of March 26, and shall forward it to you when it is complete.

Yours very truly, —, —.

WLHG:mj

Encl.

The following are the names of the persons who have been appointed to the various positions in the office of the Secretary of the Interior, Department of the Interior, Washington, D. C., for the year ending June 30, 1901.

Chief Clerk, Mr. J. M. Smith  
 Deputy Chief Clerk, Mr. J. M. Smith  
 Assistant Secretary, Mr. J. M. Smith  
 Assistant Secretary, Mr. J. M. Smith

Assistant Secretary, Mr. J. M. Smith  
 Assistant Secretary, Mr. J. M. Smith  
 Assistant Secretary, Mr. J. M. Smith  
 Assistant Secretary, Mr. J. M. Smith

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SEE  
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STEP

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 Manufa  
 to the  
 Americ

SHOE COMPANY, INC.  
BRANDS

---

## STEP

COMPETITIVE BRANDS  
AND MANUFACTURERS

---

Enna Jettick

Enna Jettick Shoes, Inc.

Fiances's

Clark Shoes

Foot Flairs

Mutual Shoe Sales Co.

Joyce

U. S. Shoe Corp.

Mannequin

General Shoe Corp.

Natural Bridge

Craddock Terry Shoe Corp.

Naturalizer

Drown Shoe Company, Inc.

Queen Quality

International Shoe Co.

Red Cross

U. S. Shoe Corp.

Rhythm Step

Johnson-Stephens &amp; Shinkle Shoe Co.

Sandler (Casuals)

Sandler of Boston

Town &amp; Country

Town &amp; Country Shoe Co.

Valentine

General Shoe Corp.

Vitality

International Shoe Co.

## BOY SCOUTS

Manufactured under license from, and  
to the specifications of, B. J. Scouts of  
America.)

General Shoe Corp.

International Shoe Co.

728  
[fol. 167E]

Commission Exhibit 84-B.

BROWN SHOE COMPANY, INC.  
BRANDS

BUSTER BROWN (Children's)

BUSTER BROWN (Boys')

COMPETITIVE BRANDS  
AND MANUFACTURERS

Acrobat  
General Shoe Corp.

Edwards  
Edwards Shoes

Gerwinettes  
Schawe-Gerwin

Jumpin' Jacks  
Vaisey Bristol Shoe Corp.

Little Yankees  
Yankee Shoemakers

Poll Parrott  
International Shoe Co.

Red Goose  
International Shoe Co.

Stride Rite  
Green Shoe Company

Weatherbird  
International Shoe Co.

Brooks  
The Wm. Brooks Shoe Co.

Crosby Square, Jr.  
Shoe Corp. of America

Douglas  
General Shoe Corp.

Fortune, Jr.  
General Shoe Corp.

Gee Pee's  
Gerberich-Payne Shoe Co.

Gerberich-Payne Shoes for Boys  
Gerberich-Payne Shoe Co.

Gerbrico's  
Gerberich-Payne Shoe Co.

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OWN SHOE COMPANY, INC.  
BRANDS

MASTER BROWN (Boys')

GIRL SCOUTS

Manufactured under license from, and  
to the specifications of, Girl Scouts  
of America.)

MANOUR DEBS

COMPETITIVE BRANDS  
AND MANUFACTURERS

Great Northern (Various Brands)  
International Shoe Co.

Thom McAn  
Mellville Shoe Co.

Winthrop, Jr.  
International Shoe Co.

Weyenberg  
Weyenberg Shoe Co.

Yorktown  
Gardiner Shoe Co.

General Shoe Corp.

International Shoe Co.

Clinic  
Juvenile Shoe Corp. of Am.

Cobbles  
U. S. Shoe Corp.

Arthur Murray Flats  
Kimel Shoe Corp.

Capexio's  
S. Capexio, Inc.

Cobblers  
Cobblers, Inc.

Cover Girl  
General Shoe Corp.

Debs  
Deb Shoe Co.

Golo  
Golo Slipper Co.

Hollywood Scooter  
Vogue Shoe Co., Inc.

Jolene  
Tober-Saifer Shoe Mfg. Co.

730

[fol. 169E]

Commission Exhibit 84-D.

BROWN SHOE COMPANY, INC.  
BRANDS

GLAMOUR DEBS

LIFE STRIDE

COMPETITIVE BRANDS  
AND MANUFACTURERS

Jumpin' Jacks  
Valsey Bristol Shoe Co.

Old Maine Trotters  
Old Town Shoe Co.

Robinettes  
Brown Shoe Co., Inc.

Sandlers  
Sandler of Boston

Spaulding  
Spaulding Athletic Co.

Stride Rite  
Green Shoe Co.

Trampeze  
Penabscot Shoe Co.

Westports by Life Stride  
Brown Shoe Co., Inc.

International Shoe Co.

Accent  
International Shoe Co.

American Girl  
American Girl Shoe Co.

Citations  
Lake Side Shoe Co.

Fiancee's  
Clark Shoe Co.

Foot Flairs  
Mutual Shoe Sales Co.



**BROWN SHOE COMPANY, INC.  
BRANDS**

---

STRAIDE

NATURALIZER

**COMPETITIVE BRANDS  
AND MANUFACTURERS**Fortunet  
General Shoe Corp.Hollywood Scooter  
Vogue Shoe Co., Inc.Jacqueline  
Wohl Shoe Co.Joyce  
U. S. Shoe Corp.Town & Country  
Town & Country Shoe Co.Air Step  
Brown Shoe Co., Inc.Enna Jettick  
Enna Jettick Shoes, Inc.Fiancee's  
Clark Shoe Co.Foot Flairs  
Mutual Shoe Sales Co.Joyce  
U. S. Shoe Corp.Mannequins  
General Shoe Corp.Natural Bridge  
Craddock Terry Shoe Corp.Queen Quality  
International Shoe Co.Red Cross  
U. S. Shoe Corp.Rhythm Step  
Johnson-Stephens & Shinkle Shoe Co.Town & Country  
Town & Country Shoe Co.Valentines  
General Shoe Corp.

**BROWN SHOE COMPANY, INC.  
BRANDS**

---

NATURALIZER

PEDWIN

PROPR-BILT

**COMPETITIVE BRANDS  
AND MANUFACTURERS**

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Vitality  
International Shoe Co.

A. S. Beck (Various Brands)  
Shoe Corp. of America

Douglas  
General Shoe Corp.

Flagg Bros.  
General Shoe Corp.

Fortune  
General Shoe Corp.

Great Northern (Various Brands)  
General Shoe Corp.

Hardy  
General Shoe Corp.

Jelco  
John E. Lucey Co.

John E. Lucey  
John E. Lucey Co.

Thom McAn  
Melville Shoe Co.

Pilgrim  
Plymouth Shoe Co.

Child Life  
Herbst Shoe Mfg. Co.

Edwards  
Edwards Shoe Co.

Kalistenika  
Gilbert Shoe Co.

Pied Piper  
Pied Piper Shoe Co.

BROWN SHOE COMPANY, INC.  
BRANDS

OPR-BILT

SQUE

BINETTES

COMPETITIVE BRANDS  
AND MANUFACTURERS

Simplex-Flexees  
Simplex Shoe Mfg. Co.

Stride Rite  
Green Shoe Co.

Allures  
Allures Shoe Corp.

Funsters by Naturalizer  
Brown Shoe Co., Inc.

Joyce  
U. S. Shoe Corp.

Penaljo  
Hamilton Shoe Co.

Red Cross Cobbies  
U. S. Shoe Corp.

Rhythm Step (Casuals)  
Johnson-Stephens & Shinkle Shoe Co.

Sandler (Casuals & Sports)  
Sandler of Boston

Tandem by Air Step  
Brown Shoe Co., Inc.

Town & Country  
Town & Country Shoe Co.

Connie Low Heelers  
Wohl Shoe Co.

Ed White Jr.  
Ed White Shoe Co.

Glamour Debs  
Brown Shoe Co., Inc.

Jolene  
Tober-Saifer Shoe Mfg. Co.

Lucerna  
Viner Bros.

734  
[fol. 173E]

Commission Exhibit 84-H.

BROWN SHOE COMPANY, INC.  
BRANDS

ROBIN HOOD

ROBLEE

COMPETITIVE BRANDS  
AND MANUFACTURERS

American, Jr.  
Consolidated National Shoe Co

Billikins  
Craddock Terry Shoe Corp.

Blue Bonnett  
Blue Bonnett Shoe Co.

Lazy Bones  
Juvenile Shoe Corp. of America

Poll Parrott  
International Shoe Co.

Red Goose  
International Shoe Co.

Stepmaster  
Ettlebrick Shoe Co.

Story Book  
General Shoe Corp.

Tick Tock  
Wohl Shoe Co.

Weatherbird  
International Shoe Co.

Bates  
Bates Shoe Co.

Crosby Square  
Mid-States Shoe Corp.

Edgerton  
Nunn-Bush Shoe Co.

Foot Pals  
Wall Streeter Shoe Co.

Freeman  
Freeman Shoe Corp.

Jarman  
General Shoe Corp.

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OWN SHOE COMPANY, INC.  
BRANDS

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ELIZ

COMPETITIVE BRANDS  
AND MANUFACTURERS

---

Mansfields  
Commonwealth Shoe Co.

Plymouth  
Plymouth Shoe Co.

Weyenberg  
Weyenberg Shoe Co.

Winthrop  
International Shoe Co.

U. S. Production of Footwear (except Rubber) Made on Conventional Machinery

Source: Bureau of Census

	<u>Pairs</u>
1959	632,108,000
1958	582,386,000
1957	597,648,000
1956	591,757,000
1955	585,369,000
1954	530,367,000
1953	532,031,000
1952	533,162,000
1951	461,930,000
1950	522,532,000



## LEATHER and SHOES BLUE BOOK

Shoe Production (Except Rubber) By Kind  
1950—1957

	Men's Shoes	Men's Shoes	Men's Shoes	Men's Shoes	Men's Shoes	Men's Shoes	Men's Shoes	Men's Shoes	Men's Shoes	Men's Shoes
1950	322,532	103,341	16,731	236,059	82,704	29,173	34,391	2,544	4,251	38,034
1951	481,990	107,000	14,639	214,975	29,544	27,300	34,142	2,707	3,591	48,540
1952	533,103	103,359	18,744	191,406	30,490	30,241	34,714	2,733	4,073	52,545
1953	532,031	100,783	18,124	287,072	33,571	32,874	37,072	3,309	3,994	59,670
1954	530,307	94,712	19,004	246,071	36,904	31,939	36,873	3,329	4,761	56,904
1955	535,309	103,641	22,997	270,908	40,612	33,606	37,006	3,089	4,121	67,087
1956	522,479	106,707	21,937	271,535	43,733	33,784	38,002	4,733	5,270	68,049
1957-JAN.-MAY* 1957-JAN.-MAY*	454,335 442,720	79,284 81,280	18,616 18,914	216,979 211,530	31,355 31,290	25,004 25,014	28,434 27,393	— —	— —	54,590

\*Includes shoes for Government  
orders and athletic footwear for 1957 included in "Other Footwear"

Source: Bureau of the Census, Dept. of Commerce

## Percentage of Canvas-Rubber and Conventional Footwear Production

	1950	1951	1952	1953	1954	1955	1956
Upper-Rubber Bottom %	8.1	8.0	6.5	5.8	5.6	5.9	5.9
Conventional Footwear %	91.9	92.0	93.5	94.2	94.4	94.1	94.1
Total Output in Millions of Pairs	381	512	570	532	500	529	530

Source: National Shoe Manufacturers Assn.

## Number of Footwear Establishments

Number of employees	Footwear (except rubber)	House Slippers	Total, Footwear and House Slippers
1-4 employees	141	22	173
5-9 "	58	15	73
10-19 "	68	27	95
20-49 "	154	35	189
50-99 "	144	32	176
100-249 "	288	34	322
250-499 "	338	7	345
500-999 "	71	1	72
1,000-2,499 "	9	—	9
2,500 and over	1	—	1
Total no. of Establishments	1,190	173	1,363
Total no. of Employees	219,375	18,579	237,954
Average no. of Employees per establishment	183	63	158

Number of establishments includes branch plants. The Census Bureau states "a company operating establishments at more than one location is required to submit a report for each location."

## STATISTICS

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### Production Of Shoes And Slippers In U.S. By Company Groups

The largest 4 producers in the shoe industry produced less than 25% of all the shoes and the largest 50 producers produced less than half the shoes. The largest 500 producers produce approximately 94% of the shoes. It is estimated that there are approximately 800 shoe producers in the U. S. and that the smallest 400 of these produce only 6% of the shoes.

## Per Cent of Total Produced

Company Group	1933	1935	1934	1932	1947	1939
Total Shoe Production (000 pairs)	558,479	585,509	530,367	533,162	484,964	424,134
4 Largest .....	23.2	22.9	22.8	23.4	25.9	23.2
5 Largest .....	28.3	27.9	28.4	29.2	31.4	28.8
15 Largest .....	39.6	37.5	34.9	34.4	36.2	34.7
25 Largest .....	35.9	34.8	34.3	36.8	38.7	36.9
35 Largest .....	37.8	36.7	35.2	39.9	41.9	39.5
50 Largest .....	39.6	38.6	40.9	41.9	42.9	43.3
75 Largest .....	41.2	40.3	41.7	42.9	44.5	45.5
100 Largest .....	42.7	41.9	43.2	44.6	46.2	47.6
250 Largest .....	44.1	43.4	44.6	46.2	47.6	49.5
500 Largest .....	45.5	44.8	46.9	47.7	48.9	51.2
All Other Companies .....	54.5	55.2	54.0	52.3	51.1	48.7

Source: Bureau of Census.

## LEATHER and SHOES BLUE BOOK

## Retail Shoe Outlets in the U.S.\*

Type of Store	Stores with Total Annual Volume of \$100,000 or More	Stores with Total Annual Volume of Less than \$100,000	Total
Department Stores	2,712		2,712
General Merchandise Stores**	5,389	22,292	28,681
Men's and Boys' Clothing Stores	2,191	2,817	5,008
Men's and Boys' Furnishing Stores	550	1,418	1,968
Women's Ready-to-Wear Stores	1,384	1,027	2,411
Family Clothing Stores	2,947	3,994	6,941
All Shoe Stores (operated during entire year)	5,302	17,484	22,786
Men's Shoe Stores***	N.A.	N.A.	2,434
Women's Shoe Stores***	N.A.	N.A.	2,408
Children's, Juvenile's Shoe Stores***	N.A.	N.A.	681
Family Shoe Stores***	N.A.	N.A.	18,258
<b>TOTAL</b>	<b>20,885</b>	<b>50,032</b>	<b>70,917</b>

\* All figures in this table are estimates based upon the 1948 and 1954 Census of Business. Base figures used were those for establishments with payroll, and it should be kept in mind that there are many one man establishments which these figures do not include.

\*\* Excludes department stores and variety stores.

\*\*\* These figures include only those establishments with payroll; during the year there were actually 22,847 shoe stores in operation.

The above table also points out the wide diversification in types of outlets for shoes. These retail outlets reach every class of customer and geographic location in the United States. Practically every active consumer in the United States passes through at least one of these stores several times yearly.

Note: It has been estimated by many students of the industry that there are nearly 100,000 retail outlets for shoes and slippers. This figure based on OPA records included cobbler shops, drug stores, etc.

Source: NRMA estimates based on 1948 and 1954 Census of Business.

## Estimated Distribution of U. S. Shoes: 1954

Type of retail outlets:	% of 1954 footwear sales:		% of 1954 footwear sales:
Independent Retail	58.9	Dept. Stores	10.1
Direct to retailers	27.9	Direct to retailers	8.4
Through wholesalers	19.0	Through wholesalers	1.7
Chain Stores	80.1	Direct to Consumers	1.4
& Mail Order Houses	22.3	Direct to Gov., Military	0.8
Direct to retailers	6.6	Export	0.7
To own retail stores			

Source: Bureau of the Census.

## Shoe Manufacturers Income Tax Returns 1945—1954

## HOW THE TOP 70 SHOE MANUFACTURING FIRMS RATED IN 1959 SHOE PRODUCTION

COMPANY**	TYPES OF SHOES MADE***	PAIRS PRODUCED		PAIRAGE CHANGE 1958-59	% OF PAIRAGE CHANGE 1958-59	PAIRAGE OUTPUT RATING		YEAR ENDING
		1958	1959			1958	1959	
International Shoe Co.	M B W-J	46,289,843	51,329,543	5,230,900	11.3	1	1	11/20
Eastcott Johnson Corp.	M B W-J	29,984,840	32,467,012	2,482,172	8.2	2	2	11/20
Brown Shoe Co.	M B W-J	27,261,000	29,981,274	2,420,265	8.9	3	3	10/20
Genesco	M B W-J	27,200,000*	29,520,000*	2,320,000	8.5	4	4	10/20
Shoe Corp. of America <sup>(1)</sup>	W-J	9,810,000*	11,050,000*	1,240,000	12.5	5	5	12/51
Evy Footwear Co., Inc.	W-J	6,330,000	8,010,000	1,680,000	26.5	6	6	12/51
J. F. McEwain	M-B	8,022,334	7,800,000	-222,334	-2.7	7	7	11/20
U. S. Shoe Corp.	W	6,947,544	7,158,000	210,456	3.0	8	8	11/20
Consolidated National Shoe Corp.	W-J	5,994,006	6,274,443	279,437	4.7	10	9	12/20
Sudbury Footwear	W-J	5,700,000*	6,200,000*	500,000	8.8	11	10	12/20
Cameo Footwear Corp.	W	6,312,618	6,142,517	-170,101	-2.7	9	11	8/50
Five Star Shoe Co.	J	5,212,000*	5,905,000*	693,000	13.3	12	12	12/20
Cradock-Terry Shoe Corp.	M-B-W-J	5,187,084	5,777,368	590,284	11.4	13	13	11/20
Gatysburg Shoe Co.	J	4,910,000	5,515,000	605,000	12.3	14	14	12/20
Green Shoe Mfg. Co.	J	4,430,000	4,850,000	420,000	9.5	15	15	11/20
H. O. Tarr Shoe Co.	J	3,994,000	4,333,000	339,000	8.5	16	16	12/20
South Berwick Shoe Co.	W-J	3,250,000	3,600,000	350,000	10.8	17	17	12/20
Munkin Shoe Co.	W-J	3,041,000	3,422,000	381,000	12.5	18	18	12/20
Dunn & McCarthy, Inc.	W	2,962,000	3,220,000	258,000	8.7	19	19	11/20
Kendall Shoe Co.	W-J	3,044,944	3,203,076	158,132	5.2	20	20	12/20
Williams Shoe Mfg. Co.	W	3,082,500	3,187,000	104,500	3.4	21	21	12/20
Mrs. Day's Ideal Baby Shoe	J	2,734,614	3,054,494	319,880	11.7	22	22	12/20
Eitelbrick Shoe Co.	W	2,844,000	2,825,100	-19,900	-0.7	23	24	11/20
Lawn Shoes, Inc.	W	2,580,000*	2,820,000*	240,000	9.3	25	25	12/20
Kiev-Sho Shoe Mfg. Co.	W-J	2,706,000	2,750,000	44,000	1.6	26	26	12/20
Fall Shoe Co.	W-J	2,377,000*	2,692,000*	315,000	13.2	28	27	12/20
Arma Boot Co.	W	2,805,000	2,610,000	-195,000	-6.9	29	28	12/20
Walt Shoe Mfg. Co.	W	2,385,000*	2,600,000*	215,000	9.1	30	30	10/20
Rubin Bros. Footwear, Inc.	M-B-W-J	2,167,540	2,517,282	349,742	16.1	31	31	12/20
Valley-Bristol Shoe Mfg.	J	2,508,300	2,513,690	5,390	.2	32	32	12/20
Radcliffe-Maybury Shoe Co.	W-J	2,255,000*	2,510,000*	255,000	11.3	33	33	12/20
Ed White Junior Shoe Co.	M-W	2,414,000	2,400,000	-14,000	-0.6	34	34	12/20
Knapp Bros. Shoe Mfg.	J	2,117,807	2,472,000	354,193	16.7	35	35	12/20
Trinfest Co.	M	2,170,000*	2,415,000*	245,000	11.2	37	37	12/20
H. H. Brown Shoe Co.	W	2,325,000*	2,410,000*	85,000	3.7	38	38	10/20
Sandler Shoe Companies	J	1,948,120	2,346,816	398,696	20.0	47	37	12/20
Moran Shoe Co.	J	2,194,326	2,315,000*	120,674	5.5	39	39	12/20
J. Edwards Shoe Co.	M-J	2,250,000	2,284,000	34,000	1.5	40	40	12/20
Albert H. Weinbrunner Co.	W	2,106,400	2,224,300*	117,900	5.6	41	41	12/20
Evangelina Shoe Co.	W	2,106,000*	2,212,000*	107,000	5.1	42	42	12/20
Town & Country Shoes, Inc.	M	2,095,000	2,200,000*	105,000	5.0	43	43	12/20
Freeman Shoe Corp.	M-B-W	2,090,000*	2,196,000*	106,000	5.1	44	44	12/20
Madwood Footwear Co.	M-B	2,128,100	2,156,316	28,216	1.3	45	45	12/20
Georgin Shoe Co.	W-J	2,033,600*	2,074,250*	40,650	2.0	46	46	12/20
Rabbie Shoe Corp.	W-J	1,960,000	2,080,000	120,000	6.1	48	47	12/20
Weyenberg Shoe Mfg. Co.	W	1,928,978	2,064,325*	135,346	6.9	49	49	12/20
Wells-Lawrence Shoe Mfg. Co.	J	2,110,000	2,040,000*	-70,000	-3.3	50	50	12/20
A. Warmen & Sons, Inc.	M-W	1,831,508	2,035,000	203,500	11.1	51	51	12/20
Hubbard Shoe Co.	W-J	1,915,000	2,028,000	113,000	5.9	52	52	12/20
Conners-Hoffman Footwear	W-J	1,890,000	2,000,000	110,000	5.8	53	53	9/50
Linda-Je Shoe Co.	J	1,832,219	1,975,488	143,269	7.8	54	54	10/20
H. Beckerman & Sons	W	1,619,460	1,670,000	50,540	3.1	55	55	12/20
Ray-Sho Shoe Co.	M-B	1,710,000	1,825,000	115,000	6.7	56	56	12/20
Miller, Hess & Co., Inc.	M-B	1,630,000*	1,750,000	120,000	7.3	57	57	12/20
Dover Shoe Mfg. Co.	M-B	1,635,000*	1,708,000*	73,000	4.5	58	58	12/20
B-W Footwear Co., Inc.	M-B	1,305,000	1,705,000	400,000	30.6	59	59	12/20
Welvarino Shoe & Tanning	M-B-J	1,595,000*	1,700,000*	105,000	6.6	60	60	12/20
Laxonia Shoe Co.	W	1,500,000*	1,650,000*	150,000	10.0	61	61	12/20
Foxton Shoe Corp.	W-B-J	1,545,000*	1,625,000*	80,000	5.2	62	62	12/20
Jovonia Shoe Corp.	J	1,480,000	1,610,000	130,000	8.8	63	63	12/20
Tabin-Hamilton Co., Inc.	W	1,430,000	1,520,000*	90,000	6.3	64	64	12/20
Myrna Shoe Co., Inc.	W-J	1,194,000	1,518,000	324,000	27.1	65	65	12/20
Auerbach Shoe Co.	W-J	1,208,000	1,515,000*	307,000	25.4	66	66	12/20
Je-Gal Shoe Co.	M-B-J	1,106,000*	1,510,000*	404,000	36.5	67	67	12/20
Smart Specialty Shoemakers	W	1,365,000	1,505,000	140,000	10.3	68	68	12/20
Mid-State Shoe Co. <sup>(2)</sup>	W	1,410,000*	1,485,000*	75,000	5.3	69	69	12/20
Shen-O-Kin Shoe Corp.	W	1,304,000	1,400,000*	96,000	7.3	70	70	12/20
Chris Laganas Shoe Co.	W	1,304,000	1,400,000*	96,000	7.3	70	70	12/20
Rayco Shoe Corp.	W	1,304,000	1,400,000*	96,000	7.3	70	70	12/20
Liberty Shoe Co.	W	1,304,000	1,400,000*	96,000	7.3	70	70	12/20
TOTALS: Top 70 Companies	—	314,375,780	342,458,319	28,082,539	8.9			

\* ESTIMATED (Note: Recorder estimates may be accepted as reliable close to actual production).

\*\* In almost all cases, company figures include those of affiliated plants and firms.

\*\*\* M = Men's; B = Boys; W = Women's; J = Juvenile. Figures are for shoes only and do not include slippers, canvas shoes or plastic footwear.

(1) Does not include A. S. Black or Canadian subsidiaries.

(2) Includes House of Crosby Square and Ideal Shoe Mfg. Co. ("Chasman").

Note: The following firms, eligible for inclusion among the top 70, did not have figures available at time of publication: BGS Inc. Corp. (over 1 million pairs); Mutual Shoe Sales Co. (between 500,000 and 1 million pairs);

# HOW THE TOP 70 SHOE MANUFACTURING FIRMS RATED IN 1959 DOLLAR SALES

RANK	COMPANY**	DOLLAR SALES		AMOUNT OF CHANGE 1958-59	% CHANGE 1958-59	DOLLAR SALES RATING	
		1958	1959			1958	1959
1/100	International Shoe Co.	\$244,300,000	\$283,280,000	\$38,980,000	15.9	1	1
2/100	Goodyear Shoe Co.	239,903,734	276,549,184	36,645,450	15.3	2	2
3/100	W. R. Jordan	218,118,015	276,422,000	58,303,985	26.7	3	3
4/100	Robert Johnson Corp.	134,533,748	146,099,113	11,565,365	8.6	4	4
5/100	U.S. Corp. of America	107,200,000*	117,100,000*	9,900,000	9.3	5	5
6/100	U.S. Shoe Corp.	45,318,619	50,858,933	5,542,314	12.2	6	6
7/100	McElwain	37,970,394	39,000,000	1,029,606	2.7	7	7
8/100	Widdock-Terry Shoe Corp.	23,830,000*	25,150,000*	1,320,000	5.5	8	8
9/100	W. Bros. Shoe Mfg. Co.	20,823,000	22,864,000	2,041,000	9.8	9	9
10/100	Consolidated Nat'l. Shoe Corp.	20,130,000	22,431,000	2,301,000	11.4	10	10
11/100	W. Shoe Mfg. Co.	18,837,000*	20,930,000*	2,093,000	11.0	11	11
12/100	W. & McCarthy, Inc.	19,050,000*	19,885,000*	835,000	4.4	12	12
13/100	W. Shoe Corp.	19,500,000	19,300,000	-200,000	-1.0	13	13
14/100	W. Shoe Mfg. Co.	16,349,709	18,140,000*	1,790,291	10.3	14	14
15/100	W. Shoe Mfg. Co.	15,539,000	17,189,300	1,650,300	10.6	15	15
16/100	W. Shoes, Inc.	12,000,000	16,000,000	4,000,000	33.3	16	16
17/100	W. Footwear Co., Inc.	14,140,000*	15,650,000*	1,510,000	10.7	17	17
18/100	W. Boot Co.	15,300,000*	15,355,000*	55,000	0.4	18	18
19/100	W. H. Weinbrenner Co.	14,100,000*	15,050,000*	950,000	6.7	19	19
20/100	W. Star Shoe Co.	12,870,000*	14,460,000*	1,590,000	12.4	20	20
21/100	W. H. Brown Shoe Co., Inc.	11,047,000*	13,787,000*	2,740,000	24.8	21	21
22/100	W. Shoe Co.	12,135,000*	13,050,000*	915,000	7.5	22	22
23/100	W. & Country Shoes, Inc.	11,647,511	12,997,708	1,350,197	11.6	23	23
24/100	W. Shoe Mfg. Co.	11,920,000*	12,690,000*	770,000	6.5	24	24
25/100	W. Shoe Companies	10,125,000*	11,300,000*	1,175,000	11.6	25	25
26/100	W. Footwear, Inc.	9,123,000*	10,935,000*	1,812,000	19.9	26	26
27/100	W. Shoe Co.	10,171,326	10,935,000*	763,674	7.5	27	27
28/100	W. Edwards Shoe Co.	9,387,000*	10,325,700*	938,700	10.0	28	28
29/100	W. Tor Shoe Co.	9,240,000*	10,100,000*	860,000	9.3	29	29
30/100	W. State Shoe Co.	9,868,000*	10,080,000*	212,000	2.1	30	30
31/100	W. Shoe & Tanning Corp.	9,156,296	9,812,440	656,144	7.2	31	31
32/100	W. Footwear Corp.	8,770,000*	9,745,000*	975,000	11.1	32	32
33/100	W. Bros. Shoe Mfg. Co., Inc.	9,140,100	9,431,900	291,800	3.2	33	33
34/100	W. Maybury Shoe Co.	7,933,562	9,002,502	1,068,940	13.5	34	34
35/100	W. Bristol Shoe Mfg. Corp.	7,610,000*	8,450,000*	840,000	11.0	35	35
36/100	W. Bros. Footwear, Inc.	7,906,500	8,441,100*	534,600	6.8	36	36
37/100	W. Shoe Co.	7,248,950	7,838,915	589,965	8.1	37	37
38/100	W. Shoe Co.	7,394,700*	7,850,000*	455,300	6.2	38	38
39/100	W. Shoe Mfg. Co.	6,740,000*	7,600,000*	860,000	12.8	39	39
40/100	W. White Junior Shoe Co.	7,445,000*	7,563,000*	118,000	1.6	40	40
41/100	W. Day's Ideal Baby Shoe Co.	6,930,000*	7,425,000*	495,000	7.1	41	41
42/100	W. Shoe Corp.	6,483,776	7,451,497	967,721	14.9	42	42
43/100	W. Shoe Co.	6,020,000*	7,150,000*	1,130,000	18.7	43	43
44/100	W. Co.	5,875,000*	6,600,000*	725,000	12.3	44	44
45/100	W. Laganas Shoe Co.	6,045,000*	6,500,000*	455,000	7.5	45	45
46/100	W. Footwear Co.	5,810,000*	6,012,000*	202,000	3.5	46	46
47/100	W. Shoe Co.	5,100,000*	5,600,000*	500,000	9.8	47	47
48/100	W. Shoe, Inc.	4,200,000	5,510,000*	1,310,000	31.2	48	48
49/100	W. Shoe Co.	4,067,000*	5,510,000*	1,443,000	35.5	49	49
50/100	W. Specialty Shoemakers, Inc.	3,800,000	5,200,000	1,400,000	36.9	50	50
51/100	W. Shoe Corp.	4,665,000*	5,100,000*	435,000	9.3	51	51
52/100	W. Shoe Co.	4,402,000	5,060,000	658,000	14.9	52	52
53/100	W. & Hoffman Footwear, Inc.	4,810,000*	5,050,000*	240,000	5.0	53	53
54/100	W. Footwear Co., Inc.	4,520,000	4,900,000*	380,000	8.4	54	54
55/100	W. Shoe Mfg. Co.	4,177,000	4,530,000	353,000	8.4	55	55
56/100	W. Shoe Co.	4,300,000	4,510,000	210,000	4.9	56	56
57/100	W. Burwick Shoe Co.	4,065,000	4,500,000	435,000	10.7	57	57
58/100	W. Determan & Sons, Inc.	3,820,000*	4,150,000*	330,000	8.6	58	58
59/100	W. & Sons	3,784,000*	4,020,000*	236,000	6.4	59	59
60/100	W. Shoe Co.	3,690,000*	3,980,000*	290,000	7.9	60	60
61/100	W. Shoe Co.	3,544,000	3,855,000	311,000	8.8	61	61
62/100	W. & Co., Inc.	3,490,000	3,750,000	260,000	7.4	62	62
63/100	W. Lawrence Shoe Mfg. Co., Inc.	3,380,000*	3,490,000*	110,000	3.2	63	63
64/100	W. Shoe Corp.	2,840,000	3,380,000*	540,000	19.0	64	64
65/100	W. Shoe Co.	2,727,446	3,275,495	548,049	20.1	65	65
66/100	W. Shoe Co.	2,020,000	3,028,000*	1,008,000	49.9	66	66
67/100	W. Hamilton Co., Inc.	2,570,000*	2,765,000*	195,000	7.6	67	67
68/100	W. O. Kin Shoe Corp.	1,710,000*	2,312,000*	602,000	35.2	68	68
69/100	TOTALS: Top 70 Firms	\$1,596,949,798	\$1,856,962,471	\$220,102,698	13.9	70	70

Estimated (Note: Recorder estimates may be accepted as reliably close to actual sales.)

In almost all cases, company figures include those of affiliated firms and company-owned stores.

\* Does not include A. S. Beck or Canadian subsidiaries.

\*\* To be eligible for inclusion in the above list, a company must first qualify for the top 70 firms on the basis of 1959 dollar sales, not on the basis of 1958 dollar sales, but not on 1958 output.

COLOR  
MATERIAL

TYPE

SOLE OR HEEL HT

HISTORY OR RECOMMENDATION:

COST

SELLING PRICE AND DATE OF PRICE CHANGE

STOCK NO.

SALES FOR  
SEASON

		3	½	4	½	5	½	6	½	7	½	8	½	9	½	10	½	11	½	12	No. Pairs on Hand	Total Pairs Ordered	Total Pairs Received
DATE ORDERED	AAAA																						
ORDER NO.	AAA																						
DELVY. DATE	AA																						
DATE RCVD.	A																						
SALES TO DATE	B																						
	C																						
DATE ORDERED	AAAA	3	½	4	½	5	½	6	½	7	½	8	½	9	½	10	½	11	½	12			
ORDER NO.	AAA																						
DELVY. DATE	AA																						
DATE RCVD.	A																						
SALES TO DATE	B																						
	C																						
DATE ORDERED	AAAA	3	½	4	½	5	½	6	½	7	½	8	½	9	½	10	½	11	½	12			
ORDER NO.	AAA																						
DELVY. DATE	AA																						
DATE RCVD.	A																						
SALES TO DATE	B																						
	C																						
DATE ORDERED	AAAA	3	½	4	½	5	½	6	½	7	½	8	½	9	½	10	½	11	½	12			
ORDER NO.	AAA																						
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SALES TO DATE	B																						
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FEDERAL TRADE COMMISSION

DOCKET NO. 7606 COMMISSION EXHIBIT NO. 98

IN THE MATTER OF

DATE 3/17/60

WITNESS

ACE REPORTING CO., Official Reporter

By





[fol. 181E]

## COMMISSION EXHIBIT 99.



Date prepared \_\_\_\_\_

BROWN FRANCHISE STORE  
MONTHLY MATERIAL  
AND BRAND REPORT

Store \_\_\_\_\_

For Month of \_\_\_\_\_

Location \_\_\_\_\_

(Women, Growing Girls, Teenage Only)

MATERIALS	Unit Sales During Month		On Hand E.O.M.	C L A S S I F I C A T I O N	MATERIALS	Unit Sales During Month		On Hand E.O.M.
	1-15	16-31	TOT.			1-15	16-31	TOT.
ALL WEAVING STONE INCLUDING BALLETS				C A S U A L S	BLUE			
BROWN					BROWN			
GREENS					BLACKS (Incl. Patent & Mesh)			
ALL OTHER HI COLORS (Inc. Multi & Pastels)					BLACK SUEDE			
WHITE					STEWARS			
WHITE COMBINATION					ALL LOW-PRICED PROMOTIONAL CASUALS			
WHITE & GREYS (and Combinations of)								
BLUE SUEDE -								
BLUE LEATHERS								
BLUE MESH & OTHER FABRICS					ALL WHITES			
BROWN & TAN BROOKE LEATHER AND REPTILES				L O W P R I C E S F O R M O R T S	ALL SADDLE OXFORDS			
BROWN-TAN ARCH & WALKING TYPES					BROWN - GREENS			
BROWN SUEDE & FABRICS					BROWN			
BLACK PATENT (Inc. Black Combinations of Patent)					GREY - BROWN			
BLACK LEATHER DRESS AND REPTILES					BROWN - WINE			
BLACK ARCH & WALKING TYPES					ALL BLACKS			
BLACK SUEDE (Inc. Mesh & Suede Combinations)								
UNREMARKABLE					LEGGING - OTHER FABRIC PLAY INCLUDING KNEE			
BROWN AND GREENS					MESH & DISCONTINUED STYLES			
ALL OTHER HI-COLOR (Inc. PASTEL & MULTI)					HIGHER PRICED SLIPPERS			
WHITE & WHITE COMB.				W I S C	POPULAR PRICED SLIPPERS			
BLUE								
BROWN - BROWN								
ALL BLACKS								
BROWN								
GREENS								
MULTI & PASTEL								
WHITE & WHITE COMB.								
BROWN - GREENS								
				B R A N D S	(Circle One) AIR STEP or NATURALIZER	Dress & Walk- ing Types		
					LIFE STRIDE	Casuals		
						Dress & Walk- ing Types		
						Casuals		
						Sport Walk		
						Dress		
						Casuals		
						Dress & Sport		
						Casual		

746

[fol. 182E]

We have carefully analyzed this report and have taken the following action in our store.

COMMENTS: \_\_\_\_\_

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OTHER BRANDS

BRAND	SOLD	BALANCE ON HAND

Please fill out this report complete no later than 10th of month - showing unit sales previous month and balance on hand, end of month (Actual Stock Count) for each classification listed.

List action other brands in space provided.

Please fill out report in duplicate. Keep original for your records and merchandising purposes. MAIL DUPLICATE TO YOUR FRANCHISE FIELD-MAN AT ONCE.

THIS REPORT WILL BE USED BY BROWN BOOK CO. AS A BASIS FOR COMMENT. BE SURE IT IS ACCURATE.

records and merge  
AT ONCE.

CASH ON HAND AND IN BANK END OF PERIOD ▶



## PROOF

RATE OF TURNOVER ON PAIRAGE BASIS		END OF PERIOD	
ON BASIS OF COST PRICE		LAST YEAR	
AVERAGE COST OF SHOES SOLD \$			
" " " " ON HAND \$			
TO DETERMINE AVERAGE COST OF SHOES SOLD DIVIDE			
SALES AT COST BY NUMBER OF PAIRS SOLD.			
TO DETERMINE AVERAGE COST OF SHOES IN INVENTORY,			
DIVIDE VALUE OF SHOE STOCK ON HAND BY NUMBER OF			
PAIRS ON HAND.			

BROWN FRANCHISE	
INSURANCE COVERAGE	
LEASEHOLD IMPROVEMENTS \$	
INSURANCE ON FIXTURES \$	
" " STOCK \$	
(AMOUNT OF COVERAGE DESIRED MUST BE ENTERED	
EACH MONTH IN THIS SECTION IF INSURANCE IS	
CARRIED THROUGH BROWN SHOE CO.)	

SHOE STOCK		END OF PERIOD	
CASH		LAST YEAR	
LEASEHOLD IMPROVEMENTS			
ACCOUNTS RECEIVABLE			
DEPOSITS AND PETTY CASH			
OTHER ASSETS			
FIXTURES			
TOTAL			
LESS LIABILITIES			
EQUITY			
ADD PROFIT FOR PERIOD			
OR SUBTRACT LOSS			
NET WORTH ADJUSTMENT			
NET WORTH END OF PERIOD			

## PAIRAGE CONTROL

	WOMEN'S DRESS TYPES 142 HEELS AND UP			WOMEN'S ARCH AND WALKING (WELT TYPES)			WOMEN'S AND G. G. SLIP LASTED (WEDGIE) CASUAL AND PLAY SHOES		
	1	2	TOTAL	1	2	TOTAL	1	2	TOTAL
ON HAND LAST REPORT									
ADD. RECEIPTS									
TOTAL									
LESS RETURNS AND TRANSFERS									
BALANCE									
LESS SALES									
BALANCE ON HAND									
BALANCE ON HAND SAME MONTH LAST YEAR									
SALES SAME MONTH LAST YEAR									
SALES THIS YEAR TO DATE									
SALES LAST YEAR TO DATE									

	WOMEN'S AND G. G. FLAT HEEL SPORTS			WOMEN'S AND G. G. DRESS FLATS (129 HLS AND LOWER)			MISSIES' 135-5		
	1	2	TOTAL	1	2	TOTAL	1	2	TOTAL
ON HAND LAST REPORT									
ADD. RECEIPTS									
TOTAL									
LESS RETURNS AND TRANSFERS									
BALANCE									
LESS SALES									
BALANCE ON HAND									
BALANCE ON HAND SAME MONTH LAST YEAR									
SALES SAME MONTH LAST YEAR									
SALES THIS YEAR TO DATE									
SALES LAST YEAR TO DATE									

	CHILDREN'S (9-12)			INFANT'S (0-8)			MEN'S DRESS			BOY'S, YOUTH'S & L. GENTS'			ALL TENNIS AND SNEAKERS			TOTAL (ALL COLUMNS)		
	1	2	TOTAL	1	2	TOTAL	1	2	TOTAL	1	2	TOTAL	1	2	TOTAL	1	2	TOTAL
ON HAND LAST REPORT																		
ADD. RECEIPTS																		
TOTAL																		
LESS RETURNS AND TRANSFERS																		
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BAL. ON HAND																		
BAL. ON HAND SAME MONTH LAST YEAR																		
SALES THIS YEAR TO DATE																		
SALES LAST YEAR TO DATE																		

TURN-OVER RATES CAN BE ENTERED ON THIS REPORT AT THE FOOT OF THE APPROPRIATE BRAND COLUMNS BELOW THE DOUBLE LINE.

IF OPERATING ON "NET WORTH" BASIS, "SALES" BY IS AND DIVIDE BY "BALANCE ON HAND."





750

[fol. 186E]

STORE NAME \_\_\_\_\_ TOWN \_\_\_\_\_ STATE \_\_\_\_\_  
**INVOICE REGISTER**  
 MONTH ENDING \_\_\_\_\_ 19\_\_\_\_

	Date	Day	RECEIVED FROM				MERCHANDISE FOR RESALE				EXPENSES NOT CASH					RESERVE ITEMS				
			BROWN BONE CO. NO Balance	OTHERS	HOBERTY AND BASS	TRANSFERS		SHOES AND FINDINGS	HOBERTY AND BASS	TRANSFERS		PICTURES	PARCEL POST	ADVERTISING	INSURANCE	SUPPLIES	MISCL.	TAX RESERVE	AMORT. LEASEHOLD	PICTURE DEPRECIATION
IN	OUT	IN				OUT														
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[fol. 187E] COMMISSION EXHIBITS 118 A-Z

AAROL C. FLEENER, was called as a witness, and being first duly sworn to tell the truth, the whole truth and nothing but the truth, testified as follows:

Direct examination,

By Mr. Ess:

Q. Will you please state your name and home address for the record, Mr. Fleener?

A. Aarol C. Fleener, 118 West Jewel, Kirkwood.

Q. By whom are you employed, Mr. Fleener?

A. Brown Shoe Company.

Q. What is your present position?

A. I am vice-president and the work is that of a coordinator of the sales and manufacturing and buying operations.

Q. Will you tell us when you started with Brown Shoe?

A. In 1917.

Q. In what position?

A. I was employed in the office as a clerk.

Q. What was the first managerial position you held in Brown Shoe Company?

A. In 1927 a new sales division was formed called the Blue Ribbon Shoemakers, but out of that was developed the Naturalizer shoe and it became known as the Naturalizer Division.

Q. And from that position, what was your next position?

A. I continued in that until 1948.

Q. What did you become in 1948?

A. Vice-president of the company. I had been elected a director the previous year in charge of sales of the company.

Q. And when did you assume your present position?

A. Early in 1957.

Q. Now, what did your duties embrace while you were vice-president in charge of sales, Mr. Fleener?

A. To sell through various sales divisions the products of our company, the branded lines, and as well as our makeup shoes.

Q. Did you have any responsibility for the Brown franchise program?

A. Yes, I did.

Q. What was your responsibility?

A. That was a division called the franchise division which services our franchise group of stores, headed by Dick Johnson, and he reported to me.

[fol. 188E] Q. Now, going to the Brown franchise program, Mr. Fleener, have you been generally familiar with it since you came to Brown Shoe Company?

A. Yes, in a general way. I became more familiar with it as I came into the duties as sales division—or sales head of the company.

Q. What is the purpose of that program?

A. It is a plan to help merchants do a better job. We have a group of field men who service those accounts from a standpoint of helping them in many ways to do a better job.

Q. In what ways do they help?

A. They will guide them in merchandising and give them a merchandising record to follow, they will help them in accounting methods, in establishing an accounting method. The prime purpose, of course, is to get the man to concentrate in few lines so that he can do a profitable and good job as a retailer.

Q. Why do you regard concentration in a few lines as important?

A. When making investment in shoes you have to buy a run of sizes that varies according to the requirements of your business, and when you divide your money out into all the items that are needed for different kinds of shoes you must have a depth of size range to permit that shoe to be sold out profitably, and it is difficult for a merchant exposed to all the different kinds of shoes that are presented to him to avoid drowning himself in his own inventory that becomes ineffective as his sizes are broken.

Q. What happens if he, as you put it, drowns himself in his own inventory?

A. He is usually broke.

Q. Why does he go broke?

A. To sell profitably you must have a group of shoes out of which you can sell the customers that come into your

store and dispose of your shoes down to where you have a very few left. The price problem is such that in the heart sizes you must have many pairs and in the end sizes you can only have a few, and that is complicated by the many styles and kinds and heels. As he sells those shoes during a season he must get out of seasonal materials. As he sells those shoes, if as he comes to the end of the season he has not disposed of a sufficient number, he then faces the job of disposing of those at a very low price, so he cannot cover his investment.

Q. That disposal at a very low price is generally known as a mark-down?

A. Yes, sir.

[fol. 189E] Q. Mr. Fleener, in 1955 what were Brown's sales of its nationally advertised branded shoes to merchants on the Brown franchise program in dollars?

A. In '55 as I recall 19,800,000, in round figures.

Q. What were they in 1956?

A. 21,000,000.

Q. And in 1957?

A. Twenty-one million seven hundred.

Q. Twenty-one million seven hundred thousand dollars?

A. Thousand, yes, sir.

Q. Do you extend financial assistance in the form of loans to dealers under the Brown franchise program?

A. Yes, we do, and others.

Q. What do you mean by others?

A. Well, it is not confined to the franchise stores, we have other merchants who have found themselves in need and whom we have helped.

Q. Now, are the retailers to whom you refer retailers beginning in business? Retailers who receive financial assistance.

A. Occasionally, but usually it is given to a merchant who has proven himself and proven his ability and who may want to expand into an additional store.

Q. What are the terms of these loans generally, Mr. Fleener?

A. The loans would be extended, say, as much as five percent, occasionally six percent, but usually less. It is on the basis of a demand note, the man pays interest. The loan

is not granted beyond his ability to repay it within that length of time.

Q. What generally—how is the maximum amount of the loan figured?

A. Well, if he requires a certain sum, we would probably go half way with him.

Q. Now, there is a written form of agreement with the Brown franchise dealers, is there not?

A. Yes, there is.

Q. Do you happen to have a copy with you?

A. Yes, I have.

Mr. Ess: I believe, Mr. Coyle, that this has already been marked as a Government's Exhibit, so if you don't mind—

Mr. Coyle: It is in evidence as a Government's exhibit.

Mr. Ess: (Continuing) I will not remark it.

By Mr. Ess:

Q. Mr. Fleener, referring to this document, how many [fol. 190E] franchise dealers do you have written agreements with?

A. Some 320, twenty-one, I believe it is 321.

Q. Now, turning to your franchise agreement, I note a provision that the merchant states under paragraph one, "I will concentrate my business within the grades and price lines covered by Brown Shoe Company franchises and will have no lines conflicting with the Brown Shoe Company brands." Will you tell us what a conflicting line is?

A. We consider a line that is in practically the same price range handling the same types of shoes as a directly conflicting line of shoes.

Q. Now, how many of your Brown franchise—do any of your Brown franchise dealers carry shoes which are supplied by manufacturers other than Brown?

A. Oh, yes.

Q. On an overall basis, can you give us an opinion as to the percentage of sales of the Brown franchise dealers of shoes manufactured by other manufacturers than Brown?

A. We estimate about twenty-five percent would be

bought from other manufacturers of his total—of their total sales.

Q. Now, do some dealers purchase more than that percentage from Brown?

A. That would vary. Some merchants might buy forty percent from other lines, some would buy considerably less.

Q. Would some buy ninety or ninety-five percent from Brown?

A. Yes, they would.

Q. What considerations enter into that, Mr. Fleener?

A. Often times it is the character of the man's business, the community that he is selling to. He may need higher priced shoes than we make in the community in which he is located, in which case that would be part of his business and he would be buying that segment from others. On the other hand, he might have some lower, there may be another merchant who was in a lower priced neighborhood and he would reach down into lower priced lines and buy those.

Q. Now, when did the phraseology that I read to you in that particular paragraph come into this agreement, Mr. Fleener, if you know?

A. I know it was—this form was made up in about 1950, 1949. I am not exact on the date, but I know it was around that time that it was drawn up.

[fol. 191E] Q. Was there formerly in existence a form of agreement whereby the franchise agreement terminated if the dealer purchased shoes from a manufacturer other than Brown?

A. I understand there was prior to the War, World War II.

Q. And when did that form of agreement come to an end, if you know?

A. I never—I had no personal knowledge of that form. It was prior to 1940 and it may have expired at that time because restrictions came into the shoe business at that time that made it unnecessary to have that kind of an agreement.

Q. Why do you say it was made unnecessary to have that?

A. Because we went under controls that it became necessary for people to live with those lines that they established prior to that time as sources of supply.



Q. But the language I read you is the language that has been in effect since about 1949 or '50?

A. Yes.

Q. Now, under the franchise program, the retailers on that program make reports, do they not?

A. Yes, they do.

Q. How many of your dealers report monthly?

A. Well, about two hundred sixty-five are reporting on a monthly basis.

Q. How many report for some period of time during the year?

A. A total of around 550.

Q. How many dealers are there on the plan currently?

A. 642, I believe. 645 right now.

Q. What is the purpose of those reports, Mr. Fleener?

The Court: Now, the 550 would include the 265?

The Witness: Yes, sir.

The Court: But the 645 would show how many are on it, or make no reports at all?

The Witness: The difference would be non-reporting.

The Court: In other words, ninety-five make no reports at all?

The Witness: That's right.

By Mr. Ess:

Q. What is the purpose of these reports, Mr. Fleener?

A. The report itself is a form that the dealer makes out to show the sales and the operation that he has had on each line of shoes or on each category of shoes, rather, [fol. 192E] not by name, but by category, such as mens, womens, and childrens, it gives him his complete merchandising performance as he makes that out, and also shows how he comes out on his operation from the standpoint of profit or loss.

Q. Does the report play any part other than merely as a report, does it serve any other purpose?

A. The prime purpose, of course, is to have the merchant do this because we think it helps him do a better job in his store. We will use the reports that are sent to us to spot any weakness that we may see in his operation and then advise him upon it as it is highlighted to us from the report.

Q. Does the report play any part in his planning for buying?

A. The buying record is another matter. The buying plan is worked out, but that is another function, it has nothing to do with this report.

Q. Will you please describe for us the buying plan?

A. Well, the buying is strictly up to the merchant. He buys what he wants and the way he wants it and when he wants it. There is no control on it. The buying plan is an advisory position that the field man may assume when he sits down and works out the amount of money that the man has to spend and how to use it the best way, without regard to the selection of any shoes, it is purely a buying plan, but the merchant has the right to buy anything he chooses and when he chooses.

Q. Now, do merchants leave the Brown franchise program?

A. Yes, they do, I am sorry to say.

Mr. Ess: Would you mark this?

(Thereupon the document was marked by the reporter as Defendants' Exhibit CCC for identification.)

Q. Mr. Fleener, I show you Defendants' Exhibit CCC and ask you what it is?

A. It is a list of franchise stores that have separated themselves from the franchise program.

Q. Was that list prepared under your supervision?

A. Yes, it was.

Q. Is it a correct list?

A. I would say it was.

Mr. Ess: I offer it in evidence.

Mr. Coyle: May I see the exhibit?

[fol. 193E] Mr. Ess: This is supplemental to interrogatory 1-B, Mr. Coyle. (Proffering the document.)

Mr. Ess: I offer Defendants' Exhibit CCC in evidence.

The Court: Is there any objection?

Mr. Coyle: No your Honor.

The Court: It may be received in evidence.

By Mr. Ess:

Q. Now, with respect to merchants who leave the Brown franchise plan, and I am not restricting myself only to this

group, Mr. Fleener, what are the reasons, if you know, why merchants leave the plan?

A. Well, there are several. A man may die, usually these are family businesses, something involved in his family that may cause him to want to quit business, sometimes there are credit reasons that develop that cause him to not be able to pay his bills, that would be another reason.

Q. Do you ever drop a dealer because he carries conflicting lines?

A. We will drop them from the franchise plan, yes, if they persist in carrying conflicting lines.

Q. I know your agreement so provides, but why do you do that?

A. We think the basic concept of the franchise plan is that a merchant cannot be successful if he is carrying conflicting lines, that is why we operate this program, and if he has a streamlined business, he has the opportunity to make more money, in our opinion, so we see no reason to have him on the plan if he can't accept the first principle of it.

Q. Now, going to some features, do you extend the privilege of joining a group life insurance plan to dealers on the franchise program?

A. Yes, we do. We encourage it.

Q. In your view is that group life insurance beneficial?

A. Yes, we think it is.

Q. How many dealers on the plan now carry that life insurance?

A. 425.

Q. Now, do you also have a fire and extended coverage policy—

The Court: Well, before you get off on that, does the Brown Company hold the main policy, or is it individual policies to the dealer?

[fol. 194E] The Witness: The policy is written, as I understand it, by the Prudential Insurance Company.

The Court: Well, what I mean is does the insurance company that provides the insurance under the plan, group life plan that you have, sell the insurance to the individual, or is there a parent policy to the company that covers all on Brown plan, or the ones that elect to come under it?

The Witness: It is a group life insurance plan.

The Court: Well, if they cease being under the Brown franchise plan, does their insurance automatically cease?

The Witness: It is a term insurance type of insurance.

The Court: All right.

By Mr. Ess:

Q. Now, do you have fire and extended coverage insurance that you make available to these dealers on the Brown franchise program?

A. Yes, we do.

Q. How many of the retailers on the Brown franchise program carry that insurance?

A. As I recall the sum, 260, or something of that nature, in that area.

Q. Do you regard this insurance as advantageous to the dealer?

A. Yes, we do.

Q. Now, do you furnish signs to franchise dealers, Mr. Fleener?

A. For two of our lines, and for others as well. It is customary in the shoe business to have signs, outdoor signs, for mens lines and childrens lines, and so we offer signs to good dealers for the Roblee and Buster Brown lines.

Q. Now, do you confine the signs to franchise dealers?

A. No.

Q. Do you happen to know how many Roblee signs are currently outstanding?

A. We have got about fifty-one I believe it is.

Q. How many of those are being leased or used by franchise dealers?

A. Thirty of them.

Q. Now, how many Buster Brown signs do you have currently?

A. 114, 115, somewhere in there.

Q. How many of those are being used by franchise dealers?

A. Fifty-three.

Q. With respect to these outside signs, and these are large signs, are they not, Mr. Fleener?

A. That's right.

[fol. 195E] Q. With respect to these signs, who bears the maintenance cost of the sign?

A. The dealer does that.

Q. Now, does Brown make available architectural services to dealers?

A. Yes, they do.

Q. Is that service confined to retailers on the Brown franchise plan?

A. No.

Q. What exactly is the nature of their architectural assistance?

A. We have a man that will help these dealers in designing and planning a store, either a new store, or one that has to be made over, even to the extent of blueprints, if needed.

Q. Are these architectural services confined to retailers on the franchise program?

A. No.

Q. Are the store layouts exactly the same?

A. The architect, or this man, has a store layout that he considers effective and good and modern and he favors that design, yes, but he has to interpret the designs that he has, and they are not all the same, in detail, for the building he is putting it in.

Q. Now, do you offer a window display service to dealers?

A. Yes.

Q. Is that service confined to franchise dealers?

A. No.

Q. Will you describe that window display service briefly?

A. We found several years ago, that has been in effect for quite some time, that many dealers in moderate size towns did not have a good window service available locally, so this design was made up to show four window trims a year on mens and four on womens is the way it has worked out today, two major and two minor displays, and they are sold to the dealer for five hundred dollars a year for this help.

Q. Now, coming back to the franchise program itself, do you require on that program that a dealer purchase any given amount of shoes from Brown Shoe Company?

A. No, no.

Q. Who decides which lines the dealer will carry?

A. He does, the dealer does.

Q. Who decides which styles within a line that he will carry?

A. The dealer does.

Q. Is he free to leave the plan at any time?

A. Yes, sir, within thirty days notice.

Q. Now, do you extend any special credit terms or discounts to franchise dealers?

A. No.

[fol. 196E] Q. They are treated the same way as any other dealer?

A. That's right.

Q. Mr. Fleener, does Brown make any sales on consignment?

A. Approximately that way, yes.

Q. That is the formula that you used this morning when you computed these various estimated retail brackets?

A. On the make-up shoes?

Q. Yes.

A. Yes.

Q. You, yourself, wouldn't know personally, would you, how many of the make-up shoes fell in the 4.20 bracket and how many in the 3.60 bracket, would you, I mean, it was more or less a general estimate that you gave this morning?

A. I was talking this morning about shoes that were sold to Kinney Company at certain prices, or Wohl, or any of the others. I was using that as the base to establish the retail price, yes.

Q. Using that six?

A. That's right.

Q. During the past five or six years, have any franchises been discontinued because the franchise didn't concentrate on Brown branded merchandise?

A. Yes, I would say there have been some.

Q. Before you dropped the franchisee, did you warn him that you're going to drop him?

A. Naturally, in dealing with our customers, we try to get them to follow the program and if we find they persist in not doing it, why, then there's no point in continuing this plan.

Q. You point out the various benefits of the plan and try to get them to concentrate on your lines?



A. Yes, we do.

Q. Do you feel that there's no point in continuing the plan if the firm won't concentrate on your lines?

A. As a franchise man, yes. We'll still sell them shoes, branded shoes.

Q. Now, this exhibit, Exhibit CCC, which shows the franchisees who have left the plan, did all of them leave voluntarily?

A. I wouldn't say that they had all left voluntarily. There may be some there that had not reported, or had not given—or had bought conflicting lines.

Q. Some of them have been terminated for that reason?

A. Some of them may.

Q. Do you know whether any of the firms listed on Exhibit CCC may have returned to the plan subsequent to the time they left it, returned again to the plan?

[fol. 197E] A. I know of one that discontinued, if I can refer to my notes, I'll give you the name of the store—that got in a discussion, it was at Antigo, Wisconsin, B & M Bootery, and they decided they wouldn't report, and didn't follow the plan, and they were dropped and then later by going to them, and working with them, we secured them, their promise to follow the program, and he has continued to do so since.

The Court: I don't believe they're on this.

Mr. Coyle: I don't have a copy of this right here, Your Honor.

The Court: That is Exhibit CCC?

Mr. Ess: Yes, Your honor.

The Court: Wisconsin is just listed at one place, is it? All you show here in Wisconsin, all you show here in Wisconsin, is L. M. Breitenbach and Gill's Shoe Store. I believe your original question was whether any—

Mr. Coyle: Any on that list.

The Court: On this particular list had returned.

Mr. Coyle: Yes, sir.

The Court: While B & M. Bootery may have returned, it isn't one that is on this list. I just want to call attention to that.

A. That is the one that I am thinking of. I don't know of any other under that circumstance.

The Court: And you wouldn't know whether any of them on there have returned on not.

A. No, sir.

By Mr. Coyle:

Q. Mr. Fleener, is it possible for a shoe store to carry conflicting lines and still be successful?

A. There are instances where a store would have a very substantial flow of business on a given segment, on a given line and they could be successful even though they had duplicate stocks, yes.

Q. In such a case as that, would you permit that store to be a Brown franchisee?

A. There are not many that we have continued as a franchise store on that basis, no. However, we will continue to sell them even if they do leave the plan, in that in our grades there is no direct conflicting between their lines.

[fol. 198E] Q. Now, these signs that you were talking about in your previous testimony, are they neon signs?

A. Yes, in most cases—not neons, they are outside illuminated signs. They are the outside signs that are put up in the front of the store.

Q. And the price on them is one dollar, is it?

A. That is the charge we make.

Q. Is that then the property of the dealer?

A. As long as he handles our shoes, yes.

Q. If he stops handling these shoes—

A. The sign comes down.

Q. You take the sign down?

A. Yes, sir.

Q. What brand names do you have the signs in?

A. Two, the Roblee's and the Buster Brown's.

Q. Do you have any Naturalizer signs?

A. No, only the neon sign that might be in the window inside the store or in the department as a display.

The Court: Are those handled on the same basis?

A. The neon signs are given to the dealers, yes.

The Court: I see.

By Mr. Coyle:

Q. You stated that the Roblee signs go to the good dealers. What do you characterize as a good dealer?

A. A man who would aggressively push that line of shoes and sell it effectively in his community.

Q. Would he be generally carrying a conflicting line if he were aggressive?

A. Not in the same price range and not as a general thing.

Q. Would the same hold true with the Buster Brown lines?

A. Yes.

Q. So generally the sign would go to dealers who were handling either Buster Brown's or Roblee's and not handling conflicting lines?

A. That is correct.

Q. Whether they were franchisees or not?

A. That is correct.

Q. Now with respect to your architectural services, do they go to good dealers, too?

A. Well, the architectural service is open to any dealer who would want to come in and work on it if he was using our shoes.

Q. Generally, if he were using your shoes, he wouldn't be handling conflicting lines, would he?

[fol. 199E] A. Yes, there are—for example, we would help a department store. It might have a large business and have some conflicting lines. We would still help them.

Q. With respect to individual dealers, it is principally for individuals.

A. Principally it is for the dealers who concentrate on our lines.

Q. With respect to your policy in making loans. Would these loans go to dealers who were concentrating on your lines.

A. Yes.

Q. With respect to the window decorator service for which I think there is a charge of five hundred dollars.

A. That is right.

Q. Is that also for dealers who concentrate on your lines?

A. Yes.

Q. Now would everyone pay the five hundred dollar charge?

A. To get that service, yes. It is well worth it.

Q. Do you have any window decorating service for which there is no charge?

A. Yes. We have signs, some neon signs as well as cards and blow-ups of ads and things of that kind for the windows.

Q. When you shifted from Edison—when Edison stopped buying from you, who took over the business of supplying Edison, do you know?

A. Well, I know generally that there was a factory that they get most of their shoes from out east that developed during that period and are continuing to sell and make their shoes.

Q. You don't know the name of the factory?

A. If I remember correctly, it is Goldstein.

Q. Now the shoes handled by your Capitol Division, ladies' shoes, are any of them produced in the same factory as the Naturalizer shoes are produced?

A. No in the strict sense of the word, there is an overlap as we move capitol shoes out of a factory where Naturalizer was moved into that factory, there was an overlap of production for a period of time where that occurred, yes.

Q. But today.

A. But today the Capitol factory is getting all of their shoes out of two factories designated for the business.

Q. Now, Mr. Fleener, you gave us the name of two manufacturers who made this pump, which is Defendants' Exhibit EEE. Were there other manufacturers as well that you knew of that made this shoe?

A. I cited three, ourselves and Carmo and Tweedie, [fol. 200E] because I knew of it. There are other people that made that silhouette, that made that type of shoe at that time.

Q. Now, would this shoe have been available at that time through a makeup manufacturer?

A. Through a makeup manufacturer?

Q. Yes.

A. That silhouette would have been, yes. It was a popular shoe at that time.

Q. Now, if a dealer stopped using the Roblee line, what would be the purpose of his keeping your sign, or the Roblee sign out in front of his store?

A. There would be no purpose, except to misuse it.

Q. Now, these franchise dealers who receive—

A. I can't hear you, sir.

Q. These franchise dealers who were discontinued from a franchise program, would they continue to buy shoes from you?

A. Yes, in almost every instance.

Mr. Ess: I have no further questions.

The commission paid Brown by U. S. Rubber.

	<u>Dating Orders</u>	<u>Fill Ins</u>
Waterproof Footwear	8% - 5%	5%
Rain Pals	5%	5%
Keds	8% - 5%	5%
Kedettes	5% - 5%	5%
U. S. Royal Sandals	5%	5%

The commissions received from U. S. Rubber become part of the general funds of Brown. They are not handled or accounted for in any manner different from other income of the Company.



ISM LETTER

## United States Rubber Company

NAUGATUCK FOOTWEAR PLANT  
NAUGATUCK, CONNECTICUT



TELEPHONE  
NAUGATUCK PARK 9-2221

January 1, 1958

BROWN SHOE COMPANY FRANCHISE DEALERS

WATERPROOF FOOTWEAR - 1958 SEASON

For the 1958 Season U. S. Brand Waterproof Footwear will be offered to Brown Franchise Dealers at the January 1, 1958 prices to retailers. The procedure covering the solicitation of Dating orders is given below:

DATING ORDERS

	Factory Make-Up Discount
Less than 144 pairs or in other than case lots of an item .....	3%
144 pairs or more (but less than 480 pairs) in case lots of an item .....	5%
480 pairs or more in case lots of an item .....	8%

NOTE

It will be permissible to consider as the equivalent of case lots multiples of 12 pairs of any individual style, color, gender and last.

If it is competitively necessary you may allow Franchise Dealers 8% factory make-up discount on Dating orders for 144 pairs or more (but less than 480 pairs) in case lots, the same as we did last Season. This should be the exception, and generally the Waterproof Dating will be written in accordance with the regular policy.

WRITING OF DATING ORDERS

Dating orders will be written on U. S. Dating Order Form 1090, Rev. 1/58, in triplicate. Salesmen will forward the original and duplicate of each page of each order to the Branch and retain the triplicate as his own copy.

Branches will edit orders promptly as received and will then arrange for two (2) Ozalid copies to be made of each page of each order. The original translucent pages together with one set of the Ozalid copies are to be forwarded promptly to the Rubber Department, Brown Shoe Company, St. Louis, Missouri, with a brief note of transmittal. The duplicate (yellow) copy of each order is to be retained in a Brown Shoe "Pending Order File". The second set of Ozalid copies is to be mailed to Naugatuck promptly as the "Sales Analysis" copy.

Brown Shoe Company orders will be recorded on Dating Sales worksheets at the time the orders are edited.

Letter

- 2 -

Brown Shoe Company Franchise Dealers  
Waterproof Footwear — 1958 Season

SETTING OF DATING ORDERS (Continued)

The name of the Branch should be clearly identified on all copies of orders being mailed to the Brown Shoe Company. Brown Shoe will indicate confirmation on the original translucent copy of each order received by inserting their order number — the original translucent copy will be returned promptly to the originating Branch. The Ozalid copy sent to the Brown Shoe Company will be retained in their possession for their records.

At the time the original translucent copy of order carrying Brown Shoe Company order number is received back in the Branch, the duplicate (yellow) copy of order form written by the salesman should be returned to the customer with the usual form of Branch acknowledgment. The original translucent copy should then be referred to Branch Credit Department.

The "Sales Analysis" copy of order when received back from Naugatuck should be placed in Brown Shoe "Pending Credit Approval File". As original translucent copies fully credit approved are received back in the Trade Service Section, these should be held with the "Sales Analysis" copy in the Brown Shoe "Pending Credit Approval File" until such time as Brown Shoe Company has advised that they have given final credit approval to the individual order. Brown Shoe Company will advise by special form as they are in position to apply final credit approval to the individual order.

The original translucent copies of Brown Shoe Company Dating orders are not to be processed on to Naugatuck for shipment until such time as credit approval slip has been received from Brown Shoe Company. As is required on all customers' orders entered with Naugatuck for direct shipment, full credit approval of Branch Credit Department must be noted in space provided on order form before original translucent copy is mailed to Naugatuck.

As original translucent copies are mailed to Naugatuck, Branches should make certain that Brown Shoe Company's order number is noted on the Ozalid "Unfilled Order File" copy. This copy should also be noted as to date original translucent was mailed to Naugatuck. This copy should then be filed — by shipping period — in "Unfilled Order File".

SETTING OF AT-ONCE ORDERS

At-Once orders will be written on our regular order form. Do not write At-Once orders on the Dating order form and do not send At-Once orders to the Brown Shoe Company for confirmation.

BILLING TO THE BROWN SHOE COMPANYSETTING ORDER SHIPMENTS

Bill to the Brown Shoe Company, St. Louis, at prices to retailers less factory make-up discount on qualifying orders, subject to terms of 2½ November 10, net December 1, 1958.

DSM Letter

"Brown Shoe Company Franchise" Dealers  
Waterproof Footwear — 1958 Season

BILLING TO THE BROWN SHOE COMPANY (Continued)

2-ONCE SHIPMENTS

Bill to the Brown Shoe Company, St. Louis, at prices to retailers, subject to terms of 2% 10 days, E. O. M.

If the Franchise Dealer earned 8% factory make-up discount on the Dating order, it be satisfactory to allow 8% on fill-in orders in case lots or in multiples of 12 pairs of a style, color, gender and last, to meet competitive conditions.

IMPORTANT

The original and duplicate copies of the invoice will be sent to the Brown Shoe Company, St. Louis, and a triplicate copy to the store receiving the shipment. The invoice to the store will be a complete copy of the invoice that we send to the Brown Shoe Company showing the factory make-up discount and terms. The invoices should carry the following phrase:

"Regular invoice will follow from the Brown Shoe Company"

\* \* \* \* \*

Please see that your salesman have an up-to-date list of Brown Franchise Stores in territory.

Very truly yours,

LESTER A. SUMER

Footwear Sales

LAS/ame

[fol. 205E]

COMMISSION EXHIBIT 121

United States of America

Before Federal Trade Commission

Docket No. 7606

In the Matter of BROWN SHOE COMPANY, A CORPORATION

## Proposed Stipulations of Fact

*Stipulation No. 1:* The true and correct name of respondent corporation is Brown Shoe Company, Inc. Respondent was incorporated in the State of New York in 1913. Its principal office is located at 8300 Maryland Avenue, St. Louis County, Missouri.

*Stipulation No. 2:* The principal officers of Brown Shoe Company, Inc. are:

John A. Bush, Chairman of the Board  
Eugene R. McCarthy, Vice Chairman of the Board  
Clark R. Gamble, President  
A. C. Fleener, Vice President  
Milton Frank, Vice President  
Louis J. Schaefer, Vice President  
Monte E. Shomaker, Vice President  
James F. Whitehead, Jr., Vice President  
H. B. Hall, Treasurer  
W. L. H. Griffin, Secretary

*Stipulation No. 3:* Among Brown's subsidiaries, separately incorporated, but wholly owned by Brown, are G. R. Kinney Corporation, Bourbeuse Shoe Company, Moench Tanning Company, Inc. and Regal Shoe Company. The subsidiaries named in this Stipulation are engaged either in the manufacturing or retailing of shoes, or both, and Bourbeuse Shoe Company and Moench Tanning Company, Inc. do not sell shoes at wholesale to independent shoe customers.

*Stipulation No. 4:* Wohl Shoe Company, whose principal office and mailing address is 1601 Washington Avenue, St.

[fol. 206E] Louis, Missouri, is a separately incorporated, but wholly owned, subsidiary of Brown. Wohl Shoe Company is incorporated under the laws of the State of Missouri.

The principal officers of Wohl Shoe Company are:

Clark R. Gamble, Chairman of the Board

Milton Frank, President

H. B. Hall, Vice President

Ben Peck, Vice President

Gene J. Roessel, Vice President

H. J. Serth, Vice President

J. D. Straus, Vice President

James C. Taylor, Vice President

W. L. H. Griffin, Secretary

J. M. Rubin, Treasurer

Wohl Shoe Company sells women's shoes at wholesale to approximately 3,200 customers located throughout the United States and the District of Columbia. Wohl Shoe Company's retail business consists primarily of the sale of women's shoes in leased retail shoe departments. It also sells some children's shoes and some men's shoes. Brand names of its women's shoes include Marquise Originals, Jacqueline, Natural Poise, Connie and Paris Fashion.

*Stipulation No. 5:* Brown Shoe Company, Inc. manufactures shoes in 34 factories located in 6 states. Brown Shoe Company, Inc. manufactures a broad line of medium-priced, nationally advertised shoes for men, women and children.

*Stipulation No. 6:* Among the brand names used by Brown to market its shoes are:

Men's shoes	—Pedwin and Roblee
Women's shoes	—Airstep, Lifestride, Naturalizer and Risque
Children's shoes	—Buster Brown, Robin Hood and Propr-Bilt
Girls' shoes	—Glamour Debs, Robinettes and Robin Hood

[fol. 207E] In addition, Brown manufactures and sells under a non-exclusive license, children's, boys' and men's shoes bearing the names Official Boy Scout and Official Girl Scout.

Brown also manufactures shoes which are sold to certain retail stores, chain stores, and mail order houses for resale under the private brand names of such customers.

*Stipulation No. 7:* Brown shoes are principally marketed by sales at wholesale to independent retail shoe customers (including individual shoe stores, chains of shoe stores, specialty stores and department stores). At the time of the issuance of the Complaint in this matter, Brown was actively selling to approximately 6,000 independent retail shoe customers located in each of the States of the United States and in the District of Columbia. As of November 20, 1959, 682 of such independent retail shoe customers were operating as "Brown Franchise Stores" on the so-called "Brown Franchise Stores Program". Of such 682 operators of the Brown Franchise Stores, 259 had entered into written Franchise Agreements in the form identified as Appendix A attached hereto and made a part hereof. The remaining 423 operators of Brown Franchise Stores were operating on the Brown Franchise Stores Program, but without having entered into a written contract.

*Stipulation No. 8:* The total sales of Brown Shoe Company, Inc., including the sales of all subsidiaries, both at wholesale and at retail, of shoes and all other articles, for the fiscal year ending October 31, 1959, were \$276,549,164. The total of such sales of Brown Shoe Company, Inc., not including the sales of or to its subsidiaries for the fiscal year ending October 31, 1959, were \$113,359,505. The total sales of Brown Shoe Company, Inc. to the approximately 6,000 independent retail shoe customers for the fiscal year ending October 31, 1959, were \$111,292,872. The total sales of Brown Shoe Company, Inc. to stores on its Brown Franchise Stores Program for the fiscal year ending October 31, 1959, were \$24,675,617.

*Stipulation No. 9:* Brown Shoe Company, Inc. has been and is now in competition with other corporations, individuals and partnerships engaged in the manufacture, sale [fol. 208E] and distribution of shoes in commerce as that term is defined in the Federal Trade Commission Act.

*Stipulation No. 10:* The nationally advertised, branded lines of shoes manufactured by Brown are priced to retail in what is generally termed to be the medium priced field.

*Stipulation No. 11:* The Brochure identified as Appen-



dix B attached hereto and made a part hereof, has been published by Brown Shoe Company, Inc., to describe the Brown Franchise Stores Program.

*Stipulation No. 12:* The following services are available to the stores participating in the Brown Franchise Program:

A. An accounting and record keeping system consisting of record form and procedures to establish and maintain an efficient standardized accounting and record system for a retail shoe store.

B. Service and assistance by Field Representatives (16 in number) in giving advice and suggestions or merchandising, sales promotion, personnel, accounting and record keeping, and other matters pertinent to the conduct of a profitable retail shoe business. In addition, such Field Representatives will, upon request, conduct a sales clinic or a salesmanship lecture for the store personnel. Such a lecture may be accompanied by recordings to show store salesmen how to sell more shoes.

C. Architectural services, through Brown's Store Planning Department (which is also available to other independent retail shoe store customers of Brown), in designing an efficient and attractive arrangement drawn expressly for one particular location and for either building a new store or remodeling an old one, together with blueprints and specifications.

D. Window trim service . . . four seasonal window display props for two windows at a cost of \$500-\$600 per year (which is also available to other independent retail shoe store customers of Brown).

E. Group insurance participation providing coverage for fire and extended casualty insurance on stock, [fol. 209E] fixtures and improvements, business interruption, robbery, safe burglary and also life insurance. Lexington Insurance Company underwrites the group coverage for the fire and extended casualty insurance with approximately 409 (as of November 20, 1959) stores participating. Prudential Life Insurance Company of America writes the group life insurance covering store owners, managers and employees of 263 stores. (as of November 20, 1959)

*Stipulation No. 13:* Brown Shoe Company, Inc., has made arrangements with United States Rubber Company whereby the stores on a Brown Franchise Program may purchase certain United States Rubber Company products at prices and upon terms set forth from time to time in accordance with certain memoranda prepared by United States Rubber Company. Copies of certain of such memoranda dated August 1, 1959, and identified as Appendices C, D and E, and dated January 1, 1960, and identified as Appendices F, G and H, are attached hereto and made a part hereof. Brown Shoe Company, Inc. receives a commission on sales of certain United States Rubber Company products to Brown Franchise Stores operating on the Brown Franchise Stores Program in accordance with the provisions of a letter dated May 8, 1959, from A. C. Ware, Branch Footwear Sales Manager of United States Rubber Company addressed to Mr. J. R. Johnston of the Franchise Stores Division of Brown Shoe Company, Inc., a copy of which letter identified as Appendix I, is attached hereto and made a part hereof. During Brown's fiscal year ending October 31, 1958, it received from United States Rubber Company commissions totaling \$158,313. And during its fiscal year ending October 31, 1959, it received from United States Rubber Company commissions totaling \$171,417. Brown pays United States Rubber Company for the canvas and waterproof footwear purchased by Brown Franchise Stores from United States Rubber Company and shipped by United States Rubber Company to such stores. Brown then in turn bills the Brown Franchise Stores on its own invoices for such canvas and waterproof footwear, assuming the credit risk. On dating orders Brown's payments to United States Rubber Company are made well in advance of receipt of payment by Brown. The above is more particularly set out in Appendix J attached hereto and made a part hereof. During the year 1958, 457 of the stores on the Brown Franchise Program purchased rubber or canvas footwear under this arrangement with United States Rubber Company, and in 1959 the number of such stores was 473.

*Stipulation No. 14:* Brown Franchise Stores are, for the most part, located in towns or cities with populations of from 5,000 to 30,000. In almost all instances there is only one franchise store located in each community.

**Stipulation No. 15:** According to published industry figures, Brown Shoe Company, Inc., with its subsidiaries, is shown to be second in dollar sales and third in pairage production in 1958 and 1959 as set forth in Appendix K attached hereto and made a part hereof. These figures include the dollar sales and the pairage production of G. R. Kinney Corporation which is operated as a separate business with independent management under order of Federal District Court for Eastern District Missouri.

# of the top brands in America

## 1974-1975

Based on a survey of 100,000 consumers, this report shows the top brands in America for 1974-1975. The survey was conducted by the National Branding Council, a non-profit organization dedicated to the study of branding and consumer behavior.

## Top Brands

The following table lists the top brands in America for 1974-1975, ranked by the number of consumers who identified them as their favorite brand.

## Rank

1. **Walmart**  
2. **Target**  
3. **Kmart**  
4. **Walgreens**  
5. **CVS**

## Brand

6. **Wal-Mart**  
7. **Target**  
8. **Kmart**  
9. **Walgreens**  
10. **CVS**

11. **Wal-Mart**  
12. **Target**  
13. **Kmart**  
14. **Walgreens**  
15. **CVS**

16. **Wal-Mart**  
17. **Target**  
18. **Kmart**  
19. **Walgreens**  
20. **CVS**

21. **Wal-Mart**  
22. **Target**  
23. **Kmart**  
24. **Walgreens**  
25. **CVS**

26. **Wal-Mart**  
27. **Target**  
28. **Kmart**  
29. **Walgreens**  
30. **CVS**



# 8 of the top brands in America

## BUSTER BROWN

—the broadest, best known, biggest selling line of children's shoes in America. Parents have shown their trust in Buster Brown fit and quality for over 50 years. Buster Brown covers the market with up-to-date styles for infants, children, growing girls, and teen-agers.

*Buster Brown*

## ROBIN HOOD

—a complete line of smartly styled, well-made and moderate-priced shoes for children. Representing one of the biggest profit opportunities in the shoe business, the Robin Hood line is designed for a market conservatively estimated at a billion dollars.

*Robin Hood*

## ROBLEE

—one of the most popular line of men's shoes in the middle-price field. The Roblee combination of quality and styling has broadened the market for this fast-selling line to include men of all ages, in all walks of life.

ROBLEE

## PEDWIN

—the "big market" line designed for young men who buy twice as many shoes as their fathers and brothers. A bell ringer at the cash register, the Pedwin line takes all retail promotion honors by featuring the "hottest shoe of the month" every month.

pedwin





#### AIR STEP

—the easiest selling women's shoes there is. Air Step features "The Magic Sole"—a magic selling feature you can demonstrate right at the fitting stool.



#### LIFE STRIDE

—a complete line of casual, classic, dress, and sport shoes for women. Life Stride offers the latest in fashion in a range where millions of young women buy.



#### RISQUE

—a promotional, highly salable line of flats and little heels. The Risque line is helping Brown Franchise retailers everywhere cash in on a changing market brought about by the trend to casual living.



#### NATURALIZER

—the fastest growing line of women's shoes in the business. Naturalizer basic types, casuals, and dress patterns have long been recognized as "the shoe with the beautiful fit."

## Selling the Brown Brands as a family gives you other profitable advantages:

- You carry shoes for all ages and both sexes. Once you've sold Mom or Dad or the kids, the whole family is your customer.
- Every one of your lines fits into a range of prices that seven out of ten families will pay.
- Every pattern you carry is ordered and delivered from one dependable source.
- You concentrate on fewer lines which eliminates overlap and conflict, simplifies merchandising, and strengthens your promotion.

# **BIGGEST National Advertising of any Shoe Family**



## **Magazine Advertising to Support Your Local Promotion**

Americans have learned to ask for (and look for) Brown Brands by name. That's because the Brown Shoe Company has used national advertising in a big way year after year to tell millions of families about the consumer benefits they will get from the Brown Brands. And this makes the retailer's promotion dollar most productive for him.



In addition to the biggest national advertising campaign in the shoe industry, Captain Kangaroo will participate in TV commercials promoting Buster Brown traffic builders.



## **A STEADY FLOW OF EFFECTIVE TIE-IN MATERIAL**

Our 35 years of experience with the Brown Franchise Retail Stores Program has shown that the Brown Franchise Retailer is promotion minded. He knows that national advertising presents the mass markets—and he tackles his own market with year-round tie-in promotions. You get full support from Brown with newspaper mats, display materials, radio and TV commercials, full-scale direct mail campaigns, and special promotion ideas. Many of them come straight to you as a result of outstanding successes elsewhere in the Brown family.

## How BROWN helps a new Brown Franchise Stores Retailer get the best start possible

- Brown architects help you design a new store—or remodel an old one

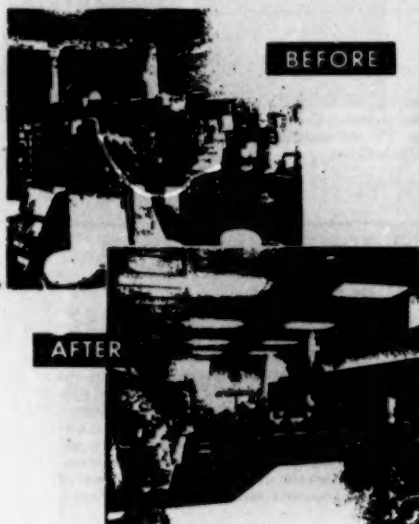
"A better looking store than the one across the street"—both inside and out—is a valuable asset in today's highly competitive market.

Thus, one of the first groups Brown calls in to help establish a new Franchise Store is our Store Planning Service.

Designing the store is a science. It includes the physical appearance and ar-

rangement of all elements. It incorporates the latest thinking (and successful experience) in merchandising, selling, and displaying footwear and accessories.

In the case of either a new store, or a remodeling project on an old store, Brown Shoe Company furnishes complete working blueprints to your contractor—with-out charge.



## United States Rubber Company

NAUGATUCK FOOTWEAR PLANT  
NAUGATUCK, CONNECTICUT

TELEPHONE  
NAUGATUCK PARK 9-2284

August 1, 1959

### BROWN SHOE COMPANY - FRANCHISE DEALERS U. S. KEDS - 1959-60 SEASON

The 1959-60 U. S. Keds line will be offered to Brown Franchise Dealers at regular prices and terms under our policy. Complete instructions are given below:

#### DATING ORDERS

Keds Dating orders will be accepted from August 1 to December 31, inclusive, for shipment from December 1, 1959 to April 25, 1960, inclusive.

#### Factory Make-Up Discount

Less than 144 pairs or in other than case lots of an item .....	3%
144 pairs or more (but less than 480 pairs) in case lots of an item .....	5%
480 pairs or more in case lots of an item .....	8%

#### DATING OF DATING ORDERS

Dating orders will be written on U. S. Dating Order Form 774 Rev. 7/59 in triplicate. Salesmen will forward the original and duplicate of each page of each order to the Branch and retain the triplicate as his own copy.

Branches will edit orders promptly as received and will then arrange for two (2) solid copies to be made of each page of each order. The original translucent pages, together with one set of the solid copies, are to be forwarded promptly to the Rubber Department, Brown Shoe Company, St. Louis, Missouri, with a brief note of transmittal. The duplicate (yellow) copy of each order is to be retained in a Brown Shoe "Pending Order File". The second set of solid copies is to be mailed to Naugatuck promptly as the "Sales Analysis" copy.

Brown Shoe Company orders will be recorded on Dating Sales worksheets at the time the orders are edited.

The name of the Branch should be clearly identified on all copies of orders being mailed to the Brown Shoe Company.

DSM Letter

- 2 -

August 1, 1959

Brown Shoe Company - Franchise Dealers  
U. S. Keds - 1959-60 Season

#### WRITING OF DATING ORDERS (Continued)

Brown Shoe will indicate confirmation on the original translucent copy of each order received by inserting their order number — the original translucent copy will be returned promptly to the originating Branch. The ozalid copy sent to the Brown Shoe Company will be retained in their possession for their records.

At the time the original translucent copy of order carrying Brown Shoe Company order number is received back in the Branch, the duplicate (yellow) copy of order form written by the salesman should be returned to the customer with the usual form of Branch acknowledgment. The original translucent copy should then be referred to Branch Credit Department.

The "Sales Analysis" copy of order when received back from Naugatuck should be placed in Brown Shoe "Pending Credit Approval File". As original translucent copies fully credit approved are received back in the Trade Service Section, these should be held with the "Sales Analysis" copy in the Brown Shoe "Pending Credit Approval File" until such time as Brown Shoe Company has advised that they have given final credit approval to the individual order. Brown Shoe Company will advise by special form as they are in position to apply final credit approval to the individual order.

The original translucent copies of Brown Shoe Company Dating orders are not to be processed on to Naugatuck for shipment until such time as credit approval slip has been received from Brown Shoe Company. As is required on all customers' orders entered with Naugatuck for direct shipment, full credit approval of Branch Credit Department must be noted in space provided on order form before original translucent copy is mailed to Naugatuck.

As original translucent copies are mailed to Naugatuck, Branches should make certain that Brown Shoe Company's order number is noted on the ozalid "Unfilled Order File" copy. This copy should also be noted as to date original translucent was mailed to Naugatuck. This copy should then be filed — by shipping period — in "Unfilled Order File".

#### WRITING OF AT-ONCE ORDERS

At-Once orders will be written on our regular order form. Do not write At-Once orders on the Dating order form and do not send At-Once orders to the Brown Shoe Company for confirmation.

#### BILLING TO THE BROWN SHOE COMPANY

##### DATING ORDER SHIPMENTS

Bill of the Brown Shoe Company, St. Louis, at prices to retailer less factory make-up discount on qualifying orders, subject to terms of 2% May 10, net June 1, 1960.

##### AT-ONCE SHIPMENTS

Bill to the Brown Shoe Company, St. Louis, at prices to retailer subject to terms of 2% 10 days, E. O. M.

DSM letter

- 3 -

August 1, 1959

Brown Shoe Company - Franchise Dealers  
W. S. Keds - 1959-60 Season

FILLING (Continued)

If the Franchise Dealer earned 8% factory make-up discount on the Dating order, it will be satisfactory to allow 8% on fill-in orders in case lots or in multiples of 12 pairs of a style, color, and gender to meet competitive conditions.

IMPORTANT

The original and duplicate copies of the invoice will be sent to the Brown Shoe Company, St. Louis, and triplicate copy to the store receiving the shipment. The invoice sent to the store will be a complete copy of the invoice that we sent to the Brown Shoe Company showing factory make-up discount and terms. The invoices should carry the following phrase:

"Regular invoice will follow from the Brown Shoe Company"

Please see that your salesmen have an up-to-date list of Brown Franchise Dealers in their territory.

Very truly yours,

LESTER A. SURHE

Branch Footwear Sales

LAS:jms



## United States Rubber Company



NAUGATUCK FOOTWEAR PLANT  
NAUGATUCK CONNECTICUT

TELEPHONE  
NAUGATUCK PARK 9-7700

DSM LETTER

August 1, 1959

BROWN SHOE COMPANY - FRANCHISE DEALERS  
U. S. KEDETTES - 1960 SEASON

The 1960 U. S. Kedettes line will be offered to Brown Franchise Dealers at regular prices and terms under the policy. The procedure is outlined below:

NET PRICES

U. S. Kedettes will be sold at the net prices shown in the August 1, 1959 Kedettes price list.

DATING ORDERS

Dating orders will be accepted from August 1 to December 31, inclusive, for shipment from December 1, 1959 to April 25, 1960, inclusive.

WRITING OF ORDERS

Dating Orders will be written on U. S. Dating Order Form 774 Rev. 7/59 in triplicate. At-Once orders will be written on our regular order form.

Procedure for writing and handling Dating and At-Once orders for Kedettes is the same as outlined for Keds in our U. S. Keds DSM Letter of August 1, 1959.

BILLING TO THE BROWN SHOE COMPANY

DATING ORDER SHIPMENTS

Bill to the Brown Shoe Company, St. Louis, at net prices subject to terms of 2 1/2 May 10, Net June 1, 1960.

AT-ONCE SHIPMENTS

Bill to the Brown Shoe Company, St. Louis, at net prices subject to terms of 2 1/2 10 days, E. O. M.

The original and duplicate copies of the invoice will be sent to the Brown Shoe Company, St. Louis, and a triplicate copy to the store receiving the shipment, with a notation that the regular invoice will follow from the Brown Shoe Company.

Very truly yours,

LESTER A. SUHRZ

Branch Footwear Sales

LAS:jms

## United States Rubber Company

NAUGATUCK FOOTWEAR PLANT  
NAUGATUCK CONNECTICUT

TELEPHONE  
NAUGATUCK PARK 9-2281



August 1, 1959

### BROWN SHOE COMPANY - FRANCHISE DEALERS U. S. ROYAL SANDALS - 1960 SEASON

U. S. Royal Sandals will be offered to Brown Franchise Dealers at regular prices and terms under the policy. The procedure is outlined below:

#### NET PRICES

U. S. Royal Sandals will be sold at the net prices shown in the August 1, 1959 U. S. Royal Sandals price list.

#### DATING ORDERS

Dating orders are those accepted from August 1 to December 31, inclusive, for shipment from December 1, 1959 to April 25, 1960, inclusive.

#### FACTORY MAKE-UP DISCOUNTS

The net prices are not subject to any discounts except 2% cash discount. Factory make-up discounts DO NOT APPLY. An order for U. S. Royal Sandals cannot be combined with an order for Keds to qualify the latter for factory make-up discount.

#### WRITING OF ORDERS

Dating orders will be written on U. S. Dating Order Form 774 Rev. 7/59 in triplicate. At-Once orders will be written on our regular order form.

Procedure for writing and handling Dating and At-Once orders for U. S. Royal Sandals is the same as outlined for Keds in our U. S. Keds DSM Letter of August 1, 1959.

### BILLING TO THE BROWN SHOE COMPANY

#### DATING ORDER SHIPMENTS

Bill to the Brown Shoe Company, St. Louis, at net prices subject to terms of 2% May 10, net June 1, 1960.

#### AT-ONCE SHIPMENTS

Bill to the Brown Shoe Company, St. Louis, at net prices subject to terms of 2% 10 days, E. O. M.

The original and duplicate copies of the invoice will be sent to the Brown Shoe Company, St. Louis, and a triplicate copy to the store receiving the shipment, with notation that the regular invoice will follow from the Brown Shoe Company.

Very truly yours,

LESTER A. SUHR  
Branch Footwear Sales

## United States Rubber Company



NAUGATUCK FOOTWEAR PLANT  
NAUGATUCK, CONNECTICUT

TELEPHONE  
NAUGATUCK PARK 9-22

DSM LETTER

January 1, 1960

### BROWN SHOE COMPANY FRANCHISE DEALERS

#### 1960 WATERPROOF SEASON - RAINPALS

Rainpals will be offered to Brown Shoe Company Franchise Dealers at the same prices and terms that we offer them to the regular trade. The procedure is outlined below:

#### PRICES

Rainpals will be sold at the prices shown in the January 1, 1960 price list.

#### DATING ORDERS

Dating orders will be accepted from January 1 to June 30 for shipment from April 1 to October 25, 1960.

#### QUANTITY DISCOUNT

5% quantity discount will be allowed on orders for 144 pairs or more in multiples of 12 pairs of a color, gender and last.

Quantity discount of 5% applies on Dating and At-Once orders.

An order for Rainpals cannot be combined with an order for other Footwear to qualify for factory make-up discount.

#### WRITING OF DATING ORDERS

Dating orders will be written on U. S. Dating Order Form 1090 - Rev. 1/60.

#### WRITING OF AT-ONCE ORDERS

At-Once orders for Rainpals will be written on our regular order form. Do not write At-Once orders on the Dating order form and do not send At-Once orders to the Brown Shoe Company for confirmation.

DSM Letter

- - 2 -

January 1, 1960

Brown Shoe Company Franchise Dealers  
1960 Waterproof Season — Rainpals

BILLING TO THE BROWN SHOE COMPANY

DATING ORDER SHIPMENTS

Bill to the Brown Shoe Company, St. Louis, at prices to retailers less quantity discount on qualifying orders, subject to terms of 2% cash November 10, net December 1, 1960.

AT-ONCE SHIPMENTS

Bill to the Brown Shoe Company, St. Louis, at prices to retailers less quantity discount on qualifying orders, subject to terms of 2% cash 10 days, E. O. M.

Very truly yours,

LESTER A. SUHRE

Branch Footwear Sales

LAS:jms

## United States Rubber Company



NAUGATUCK FOOTWEAR PLANT  
NAUGATUCK CONNECTICUT

DSM LETTER

January 1, 1960

### BROWN SHOE COMPANY FRANCHISE DEALERS

### 1960 WATERPROOF SEASON -- U. S. PAK-A-WAYS

Pak-A-Ways will be offered to Brown Shoe Company Franchise Dealers at the same prices and terms that we offer them to the regular trade. The procedure is outlined below:

#### PRICES

Pak-A-Ways will be sold at the prices shown in the January 1, 1960 price list.

#### DATING ORDERS

Dating orders will be accepted from January 1 to June 30 for shipment from April 1 to October 25, 1960.

#### QUANTITY DISCOUNT

5% quantity discount will be allowed on orders for 144 pairs or more in multiples of 12 pairs of a stock number.

Quantity discount of 5% applies on Dating and At-Once orders.

An order for Pak-A-Ways cannot be combined with an order for other Footwear to qualify for factory make-up discount.

#### WRITING OF DATING ORDERS

Dating orders will be written on U. S. Dating order form 1090 - Rev. 1/60.

#### WRITING OF AT-ONCE ORDERS

At-Once orders for Pak-A-Ways will be written on our regular order form. Do not write At-Once orders on the Dating order form and do not send At-Once orders to the Brown Shoe Company for confirmation.

and Letter

- 2 -

January 1, 1960

Brown Shoe Company Franchise Dealers  
1960 Waterproof Season — U. S. Pak-A-Ways

BILLING TO THE BROWN SHOE COMPANY

ATING ORDER SHIPMENTS

Bill to the Brown Shoe Company, St. Louis, at prices to retailers less quantity discount on qualifying orders, subject to terms of 2% cash November 10, net December 1, 1960.

T-ONCE SHIPMENTS

Bill to the Brown Shoe Company, St. Louis, at prices to retailers less quantity discount on qualifying orders, subject to terms of 2% cash 10 days, E. O. M.

Very truly yours,:

LESTER A. SUHRE

Branch Footwear Sales

LAS:jms



## United States Rubber Company



DSM LETTER

NAUGATUCK FOOTWEAR PLANT  
NAUGATUCK, CONNECTICUT

TELEPHONE  
NAUGATUCK PARK 9-2226

January 1, 1960

### BROWN SHOE COMPANY FRANCHISE DEALERS

### WATERPROOF FOOTWEAR - 1960 SEASON

For the 1960 Season U. S. Brand Waterproof Footwear will be offered to Brown Franchise Dealers at the January 1, 1960 prices to retailers. The procedure covering the solicitation of Dating orders is given below:

#### DATING ORDERS

Factory  
Make-Up  
Discount

Less than 144 pairs or in other than case lots of an item .....	3%
144 pairs or more (but less than 480 pairs) in case lots of an item ...	5%
480 pairs or more in case lots of an item .....	8%

#### NOTE

It will be permissible to consider as the equivalent of case lots multiples of 12 pairs of an individual style, color, gender and last.

#### TRITING OF DATING ORDERS

Dating orders will be written on U. S. Dating Order Form 1090, Rev. 1/60, in triplicate. Salesmen will forward the original and duplicate of each page of each order to the branch and retain the triplicate as their own copy.

Branches will edit orders promptly as received and will then arrange for two (2) Ozalid copies to be made of each page of each order. The original translucent pages, together with one set of the Ozalid copies, are to be forwarded promptly to the Rubber Department, Brown Shoe Company, St. Louis, Missouri, with a brief note of transmittal. The duplicate (yellow) copy of each order is to be retained in a Brown Shoe "Pending Order File". The second set of Ozalid copies is to be mailed to Naugatuck promptly as the "Sales Analysis" copy.

Brown Shoe Company orders will be recorded on Dating Sales worksheets at the time the orders are edited.

The name of the branch should be clearly identified on all copies of orders being mailed to the Brown Shoe Company.

Letter

- 2 -

January 1, 1960

Brown Shoe Company Franchise Dealers  
Waterproof Footwear — 1960 Season

# WRITING OF DATING ORDERS (Continued)

Brown Shoe will indicate confirmation on the original translucent copy of each order received by inserting their order number — the original translucent copy will be returned promptly to the originating branch. The Ozalid copy sent to the Brown Shoe Company will be retained in their possession for their records.

At the time the original translucent copy of order carrying Brown Shoe Company order number is received back in the branch, the duplicate (yellow) copy of order form written by the salesman should be returned to the customer with the usual form of branch acknowledgment. The original translucent copy should then be referred to Branch Credit Department.

The "Sales Analysis" copy of order when received back from Naugatuck should be placed in Brown Shoe "Pending Credit Approval File". As original translucent copies, fully credit approved, are received back in the Trade Service Section, these should be held with the "Sales Analysis" copy in the Brown Shoe "Pending Credit Approval File" until such time as Brown Shoe Company has advised that they have given final credit approval to the individual order. Brown Shoe Company will advise by special form as they are in position to apply final credit approval to the individual order.

The original translucent copies of Brown Shoe Company Dating orders are not to be processed on to Naugatuck for shipment until such time as credit approval slip has been received from Brown Shoe Company. As is required on all customers' orders entered with Naugatuck for direct shipment, full credit approval of Branch Credit Department must be noted in space provided on order form before original translucent copy is mailed to Naugatuck.

As original translucent copies are mailed to Naugatuck, branches should make certain that Brown Shoe Company's order number is noted on the Ozalid "Unfilled Order File" copy. This copy should also be noted as to date original translucent was mailed to Naugatuck. This copy should then be filed - by shipping period - in "Unfilled Order File".

# WRITING OF AT-ONCE ORDERS

At-Once orders will be written on our regular order form. Do not write At-Once orders on the Dating order form and do not send At-Once orders to the Brown Shoe Company for confirmation.

## BILLING TO THE BROWN SHOE COMPANY

### DATE ORDER SHIPMENTS

Bill to the Brown Shoe Company, St. Louis, at prices to retailers less factory make-up discount on qualifying orders, subject to terms of 2% November 10, net December 1, 1960.

### AT-ONCE SHIPMENTS

Bill to the Brown Shoe Company, St. Louis, at prices to retailers, subject to terms of 2% 10 days, E. O. M.

D Letter

- 3 -

January 1, 1960

Brown Shoe Company Franchise Dealers  
Waterproof Footwear — 1960 Season

BILLING TO THE BROWN SHOE COMPANY (Continued)

If the Franchise Dealer earned 8% factory make-up discount on the Dating order it will be satisfactory to allow 8% on fill-in orders in case lots or in multi of 12 pairs of a style, color, gender and last, to meet competitive conditions.

IMPORTANT

The original and duplicate copies of the invoice will be sent to the Brown Shoe Company, St. Louis, and a triplicate copy to the store receiving the shipment. Invoice sent to the store will be a complete copy of the invoice that we send to the Brown Shoe Company showing the factory make-up discount and terms. The invoice should carry the following phrase:

"Regular invoice will follow from the Brown Shoe Company"

\* \* \* \* \*

Please see that your salesmen have an up-to-date list of Brown Franchise Stores their territory.

Very truly yours,

LESTER A. SUMRE

Branch Footwear Sales

LAS:jms

Mr. J. R. Johnston  
Franchise Stores Division  
Brown Shoe Company  
St. Louis 24, Missouri

Dear Dick:

This will confirm agreements arrived at with you on our visit in your office Tuesday, April 28, concerning a revision on commissions on the sale of Waterproof Footwear, Keds, and Kedettes to Brown Shoe Company Franchise dealers.

The following revisions in commissions mutually agreed upon will become effective on the dates set forth.

Revisions in commissions on Dating orders will be as follows, and will become effective on the billing dates designated.

	<u>Billing as of</u>	<u>Commission</u>		<u>Billing as of</u>	<u>Commission</u>
Waterproof	1/1/60	10%	Waterproof	1/1/61	6%
Keds	8/1/59	10%	Keds	8/1/60	6%
Kedettes	8/1/59	5%	Kedettes	8/1/60	5%

Commissions on Dating orders of Rainpals and Royal Sandals will remain unchanged and will continue as follows:

Rainpals (Plastic)	5%
Royal Sandals	5%

Commissions on fill-ins or at-once business will remain unchanged and will continue as follows:

Waterproof	5%
Keds	5%
Kedettes	5%
Rainpals (Plastic)	5%
Royal Sandals	5%

It was agreed that both United States Rubber and Brown Shoe Company have mutually benefitted in the commission arrangements which have been in effect over a period of many years. We are looking forward to the continuation of this fine relationship on a mutually profitable basis for many years to come.

Very truly yours,

ACT/ms

A. C. Ware  
Branch Footwear Sales Manager

cc: Messrs. W. L. H. Griffin — Brown Shoe  
[ ] J. Stroessner — Brown Shoe  
J. J. Brady — 1230

Merchants on the Brown Franchise Program, who purchase waterproof and canvas footwear from U. S. Rubber Company and are filled by Brown Shoe Company, do so as follows:

The bulk of purchases are made on dating (advance) orders. On canvas footwear dating orders carry terms of May 10 less 2 per cent cash discount, net June 1. Waterproof footwear carry terms of November 10 less 2 per cent cash discount, net December 1. Fill in orders carry terms of 30 days less 2 per cent cash discount.

#### Dating Orders

The U. S. Rubber Company sales representative solicits the merchant and receives an order. Such orders are sent by U. S. Rubber's salesman to the branch office of U. S. Rubber Company which in turn sends Brown Shoe Company two copies of the order. Brown identifies these orders with an order number in addition to U. S. Rubber Company's order number and processes them for credit approval. If the order receives credit approval, U. S. Rubber Company is advised. In the case of orders which are not immediately approved for credit by the Credit Department of Brown, U. S. Rubber Company is notified that approval is being withheld.

#### Fill In Orders

Fill in orders are orders placed during the retailer's selling season and are sent by the merchant directly to a branch of U. S. Rubber Company or given to a U. S. Rubber Company salesman. U. S. Rubber Company has a list of merchants on the Brown Franchise Program listing the amount of credit for which Brown's approval is automatically given. Where a fill in order exceeds the amount of this automatic credit OK, the branch requests credit OK from Brown.

Under the above procedure if U. S. Rubber Company ships prior to receiving credit approval or in excess of a fixed amount of automatic credit approval, Brown Shoe Company does not guarantee payment of the account.

#### Payment

When U. S. Rubber Company makes a shipment, two copies of the invoice are mailed to Brown and another copy to the customer. Brown Shoe Company bills the franchise customer directly from the invoice received from U. S. Rubber Company. The charge resulting from the bill to the franchise customer is posted to that customer's account, and payment is made by the customer to Brown in accordance with the terms of shipment shown thereon as described above.

U. S. Rubber Company, each month, sends Brown a statement covering all shipments and credits made to franchise dealers during the previous month. This statement is paid by Brown to U. S. Rubber Company by the 10th of the month. Thus, no payments are made by Brown prior to shipment, although on dating orders Brown's payments to U. S. Rubber are made well in advance of receipt of payment by Brown.

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In the years 1954 through 1958 Brown Shoe Company sustained two credit losses on purchases made by Brown Franchise Stores of goods from U. S. Rubber Company. These were as follows:

1. Binn's Bootery  
Wayco, Texas  
February 22, 1957  
\$2,197.17
2. Barrington Bootery, Inc.  
Barrington, Illinois  
October 29, 1958  
\$398.50

It is expected that this latter loss will be recovered in its entirety by the attorney with whom this account has been placed.

We have been unable to discover any instance in which payments for U. S. Rubber goods by merchants were as much as six months late in the years 1954 through 1958.

In the event that Franchise merchants who have purchased goods from U. S. Rubber Company return such goods for credit for reasons of quality, fit, etc., such returns are made directly to U. S. Rubber Company by the merchants, and any adjustments are agreed to by the merchant and U. S. Rubber Company. Brown does not make any adjustments for loss in transit, for variations in quantity from the amount stated on the invoice, or in quality, such adjustments being made by the merchant involved and U. S. Rubber Company.



# United States Rubber Company

## ISM LETTER



TELEPHONE  
NAUGATUCK PARK 9-2281

NAUGATUCK FOOTWEAR PLANT  
NAUGATUCK, CONNECTICUT

August 1, 1958

### BROWN SHOE COMPANY - FRANCHISE DEALERS U. S. KEDS - 1958-59 SEASON

The 1958-59 U. S. Keds line will be offered to Brown Franchise Dealers at regular prices and terms under our policy. Complete instructions are given below:

#### DATING ORDERS

Keds Dating orders will be accepted from August 1 to December 31, inclusive, for shipment from December 1, 1958 to April 25, 1959, inclusive.

#### Factory Make-Up Discount

Less than 144 pairs or in other than case lots of an item .....	3%
144 pairs or more (but less than 480 pairs) in case lots of an item .....	5%
480 pairs or more in case lots of an item .....	8%

#### WRITING OF DATING ORDERS

Dating orders will be written on U. S. Dating Order Form 774 Rev. 7/58 in triplicate. Salesmen will forward the original and duplicate of each page of each order to the Branch and retain the triplicate as his own copy.

Branches will edit orders promptly as received and will then arrange for two (2) ozalid copies to be made of each page of each order. The original translucent pages, together with one set of the ozalid copies, are to be forwarded promptly to the Rubber Department, Brown Shoe Company, St. Louis, Missouri, with a brief note of transmittal. The duplicate (yellow) copy of each order is to be retained in a Brown Shoe "Pending Order File". The second set of ozalid copies is to be mailed to Naugatuck promptly as the "Sales Analysis" copy.

Brown Shoe Company orders will be recorded on Dating Sales worksheets at the time the orders are edited.

The name of the Branch should be clearly identified on all copies of orders being mailed to the Brown Shoe Company.

NEW Letter

- 2 -

August 1, 1958

Brown Shoe Company - Franchise Dealers  
U. S. Keds - 1958-59 Season

WRITING OF DATING ORDERS (Continued)

Brown Shoe will indicate confirmation on the original translucent copy of each order received by inserting their order number - the original translucent copy will be returned promptly to the originating Branch. The ozalid copy sent to the Brown Shoe Company will be retained in their possession for their records.

At the time the original translucent copy of order carrying Brown Shoe Company order number is received back in the Branch, the duplicate (yellow) copy of order form written by the salesman should be returned to the customer with the usual form of Branch acknowledgment. The original translucent copy should then be referred to Branch Credit Department.

The "Sales Analysis" copy of order when received back from Naugatuck should be placed in Brown Shoe "Pending Credit Approval File". As original translucent copies fully credit approved are received back in the Trade Service Section, these should be held with the "Sales Analysis" copy in the Brown Shoe "Pending Credit Approval File" until such time as Brown Shoe Company has advised that they have given final credit approval to the individual order. Brown Shoe Company will advise by special form as they are in position to apply final credit approval to the individual order.

The original translucent copies of Brown Shoe Company Dating orders are not to be processed on to Naugatuck for shipment until such time as credit approval slip has been received from Brown Shoe Company. As is required on all customers' orders entered with Naugatuck for direct shipment, full credit approval of Branch Credit Department must be noted in space provided on order form before original translucent copy is mailed to Naugatuck.

As original translucent copies are mailed to Naugatuck, Branches should make certain that Brown Shoe Company's order number is noted on the ozalid "Unfilled Order File" copy. This copy should also be noted as to date original translucent was mailed to Naugatuck. This copy should then be filed - by shipping period - in "Unfilled Order File".

WRITING OF AT-ONCE ORDERS

At-Once orders will be written on our regular order form. Do not write At-Once orders on the Dating order form and do not send At-Once orders to the Brown Shoe Company for confirmation.

BILLING TO THE BROWN SHOE COMPANYDATING ORDER SHIPMENTS

Bill to the Brown Shoe Company, St. Louis, at prices to retailer less factory make-up discount on qualifying orders, subject to terms of 2% May 10, net June 1, 1959.

AT-ONCE SHIPMENTS

Bill to the Brown Shoe Company, St. Louis, at prices to retailer subject to terms of 10 days, E. O. N.

ISM Letter

- 3 -

August 1, 1958

Brown Shoe Company - Franchise Dealers  
U. S. Keds - 1958-59 Season

BILLING (Continued)

If the Franchise Dealer earned 8% factory make-up discount on the Dating order, it will be satisfactory to allow 8% on fill-in orders in case lots or in multiples of 12 pairs of a style, color, and gender to meet competitive conditions.

IMPORTANT

The original and duplicate copies of the invoice will be sent to the Brown Shoe Company, St. Louis, and triplicate copy to the store receiving the shipment. The invoice sent to the store will be a complete copy of the invoice that we sent to Brown Shoe Company showing factory make-up discount and terms. The invoices should carry the following phrase:

"Regular invoice will follow from the Brown Shoe Company"

Please see that your salesmen have an up-to-date list of Brown Franchise Dealers in their territory.

Very truly yours,

LESTER A. SUHR

Branch Footwear Sales

LAS/anc



**United States Rubber Company**  
Naugatuck Footwear Plant

January 1, 1955

BROWN SHOE COMPANY FRANCHISE DEALERS

WATERPROOF FOOTWEAR — 1955 SEASON

For the 1955 season U. S. Brand and Goodyear Glove Brand Waterproof will be offered to Brown Franchise Dealers at the January 1, 1955 prices to retailers. The procedure covering the solicitation of dating orders will be the same as last season and complete instructions are given below:

DATING ORDERS

	Factory Make-up Discount
Less than 144 pairs.....	3%
144 pairs to 480 pairs.....	8%
480 pairs or more.....	8%

**NOTE:** It will be permissible to consider as the equivalent of case lots multiples of 12 pairs of any individual style, color, gender, last and width. This applies to Latex and Plastic as well as to Conventional items.

WRITING OF DATING ORDERS

Dating orders will be written on the Brown Shoe Company "Rubber Department" four-part order form, and the salesman will add one extra tissue - the five copies will be distributed as follows:

The extra tissue retained by the salesman.

The pink copy to be left with the dealer.

The salesman will send the blue, yellow and regular tissue to his local branch. (The branch will retain the regular white tissue copy and will forward the blue and the yellow copies of Brown orders to the Rubber Department, Brown Shoe Company, St. Louis, Missouri)

The salesman will use his regular order number in regular sequence, prefixing his number with the letter "B". The salesman will write orders in the same manner as for other dealers, showing terms and showing factory make-up discount where it applies.

The salesman's name should be legibly written in the lower right-hand corner of the Brown order form, and underneath the salesman's name should appear the name of the branch.

-2-

The Brown Shoe Company will write the dating orders on our order forms (551 Glove and 556 U. S.) and ret on them to the branch of origin.

#### WRITING OF AT-ONCE ORDERS

At-once orders will be written on our regular order forms. Do not write at-once orders on Brown Shoe Company order forms, and do not send at-once orders to the Brown Shoe Company for confirmation.

On at-once orders for over \$100.00 you will communicate with the Brown Shoe Company, St. Louis, for credit approval.

#### BILLING TO THE BROWN SHOE CO.

##### DATING ORDER SHIPMENTS

Bill to the Brown Shoe Company, St. Louis, at prices to retailers less factory make-up discount on qualifying orders, subject to terms of 2% November 10th, net December 1st, 1955.

##### AT-ONCE SHIPMENTS

Bill to the Brown Shoe Company, St. Louis, at prices to retailer, subject to terms of 2% 10 days E.O.M.

If the Franchise Dealer earned 8% factory make-up discount on the dating order, it will be satisfactory to allow 8% on fill-in orders in case lots or in multiples of 12 pairs of a style, color, gender and width to meet competitive conditions.

#### IMPORTANT

The original and duplicate copies of the invoice will be sent to the Brown Shoe Company, St. Louis, and a triplicate copy to the store receiving the shipment. The invoice sent to the store will be a complete copy of the invoice that we send to the Brown Shoe Company showing factory make-up discount and terms. The invoices should carry the following phrase:

"Regular invoice will follow from the Brown Shoe Company"

\* \* \* \* \*

Please see that your salesman have an up-to-date list of Brown Franchise Stores.

Very truly yours,

J. J. TARRANT

Footwear Sales

JJT/lm

United States Rubber Company  
 NAUGATUCK FOOTWEAR PLANT  
 NAUGATUCK, CONNECTICUT

DSM LETTER

January 1, 1956

BROWN SHOE COMPANY FRANCHISE DEALERSWATERPROOF FOOTWEAR — 1956 SEASON

For the 1956 season U. S. Brand and Goodyear Glove Brand Waterproof will be offered to Brown Franchise Dealers at the January 1, 1956 prices to retailers. The procedure covering the solicitation of dating orders is given below:

DATING ORDERS

	Factory Make-up Discount
Less than 144 pairs.....	3%
144 pairs but less than 480 pairs in case lots of an item.....	5%
480 pairs or more in case lots of an item.....	8%

NOTE

It will be permissible to consider as the equivalent of case lots multiples of 12 pairs of any individual style, color, gender, last and width.

If it is competitively necessary you may allow Franchise Dealers 8% factory make-up discount on dating orders for 144 pairs or more (but less than 480 pairs) in case lots, the same as we did last season. This should be the exception and generally the Waterproof dating will be written in accordance with the regular policy.

WRITING OF DATING ORDERS

Dating orders will be written on the Brown Shoe Company "Rubber Department" four-part order form, and the salesman will add one extra tissue—the five copies will be distributed as follows:

The extra tissue retained by the salesman.

The pink copy to be left with the dealer.

The salesman will send the blue, yellow and regular tissue to his local branch. (The branch will retain the regular white tissue copy and will forward the blue and the yellow copies of Brown orders to the "Rubber Department", Brown Shoe Company, St. Louis, Missouri).

The salesman will use his regular order number in regular sequence, prefixing this number with the letter "B". The salesman will write orders in the same manner as for other dealers, showing terms and showing factory make-up discount where it applies.



DSM LETTER

1/1/56

- 2 -

WRITING OF DATING ORDERS (Cont'd)

The salesman's name should be legibly written in the lower right-hand corner of the Brown order form, and underneath the salesman's name should appear the name of the branch.

The Brown Shoe Company will rewrite the dating orders on our order Forms (551 Glove and 556 U. S.) and return them to the branch of origin.

WRITING OF AT-ONCE ORDERS

At-once orders will be written on our regular order forms. Do not write at-once orders on Brown Shoe Company order forms, and do not send at-once orders to the Brown Shoe Company for confirmation.

BILLING TO THE BROWN SHOE COMPANYDATING ORDER SHIPMENTS

Bill to the Brown Shoe Company, St. Louis, at prices to retailers less factory make-up discount on qualifying orders, subject to terms of 2% November 10, net December 1, 1956.

AT-ONCE SHIPMENTS

Bill to the Brown Shoe Company, St. Louis, at prices to retailer, subject to terms of 2% 10 days, E.O.M.

If the Franchise Dealer earned 8% factory make-up discount on the dating order, it will be satisfactory to allow 8% on fill-in orders, in case lots or in multiples of 12 pairs of a style, color, gender, and width to meet competitive conditions.

IMPORTANT

The original and duplicate copies of the invoice will be sent to the Brown Shoe Company, St. Louis, and a triplicate copy to the store receiving the shipment. The invoice sent to the store will be a complete copy of the invoice that we send to the Brown Shoe Company showing the factory make-up discount and terms. The invoices should carry the following phrase:

"Regular invoice will follow from the Brown Shoe Company"

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Please see that your salesmen have an up-to-date list of Brown Franchise Stores.

Very truly yours,

J. J. TARRANT  
Footwear Sales

JJT:amc



## United States Rubber Company

NAUGATUCK FOOTWEAR PLANT  
NAUGATUCK, CONNECTICUT

NEW LETTER

January 1, 1957

### BROWN SHOE COMPANY FRANCHISE DEALERS

#### WATERPROOF FOOTWEAR - 1957 SEASON

For the 1957 Season U. S. Brand and Goodyear Glove Brand Waterproof will be offered to Brown Franchise Dealers at the January 1, 1957 prices to retailers. The procedure covering the solicitation of dating orders is given below:

#### DATING ORDERS

Factory  
Make-up  
Discount

Less than 144 pairs. . . . .	3%
144 pairs but less than 480 pairs in case lots of an item. . . . .	5%
480 pairs or more in case lots of an item. . . . .	8%

#### NOTE

It will be permissible to consider as the equivalent of case lots multiples of 12 pairs of any individual style, color, gender and last.

If it is competitively necessary you may allow Franchise Dealers 8% factory make-up discount on dating orders for 144 pairs or more (but less than 480 pairs) in case lots, the same as we did last Season. This should be the exception and generally the Waterproof dating will be written in accordance with the regular policy.

#### WRITING OF DATING ORDERS

Dating orders will be written on the Brown Shoe Company "Rubber Department" four-part order form and the salesman will add one extra tissue - the five copies will be distributed as follows:

The extra tissue retained by the salesman.  
The pink copy to be left with the dealer.  
The salesman will send the blue, yellow and regular tissue to his local Branch. (The Branch will retain the regular white tissue copy and will forward the blue and the yellow copies of Brown orders to the "Rubber Department", Brown Shoe Company, St. Louis, Missouri.)

The salesman will use his regular order number in regular sequence prefixing this number with the letter "F". The salesman will write orders in the same manner as for other dealers showing terms and showing factory make-up discount where it applies.

DEM Letter

Brown Shoe Company Franchise Dealers  
Waterproof Footwear — 1957 Season

1/1/57

- 2 -

WRITING OF DATING ORDERS (Continued)

The salesman's name should be legibly written in the lower right-hand corner of the Brown order form and underneath the salesman's name should appear the name of the Branch.

The Brown Shoe Company will rewrite the dating orders on our order Forms (551 Glove and 556 U. S.) and return them to the Branch of origin.

WRITING OF AT-ONCE ORDERS

At-once orders will be written on our regular order forms. Do not write at-once orders on Brown Shoe Company order forms and do not send at-once orders to the Brown Shoe Company for confirmation.

BILLING TO THE BROWN SHOE COMPANY

DATING ORDER SHIPMENTS

Bill to the Brown Shoe Company, St. Louis, at prices to retailers less factory make-up discount on qualifying orders subject to terms of 2% November 10, net December 1, 1957.

AT-ONCE SHIPMENTS

Bill to the Brown Shoe Company, St. Louis, at prices to retailer subject to terms of 2% 10 days, E. O. M.

If the Franchise Dealer earned 8% factory make-up discount on the dating order, it will be satisfactory to allow 8% on fill-in orders in case lots or in multiples of 12 pairs of a style, color, gender and last to meet competitive conditions.

IMPORTANT

The original and duplicate copies of the invoice will be sent to the Brown Shoe Company, St. Louis, and a triplicate copy to the store receiving the shipment. The invoice sent to the store will be a complete copy of the invoice that we send to the Brown Shoe Company showing the factory make-up discount and terms. The invoices should carry the following phrase:

"Regular invoice will follow from the Brown Shoe Company"

\* \* \* \* \*

Please see that your salesman have an up-to-date list of Brown Franchise Stores.

Very truly yours,

LESTER A. SUMME  
Footwear Sales

[fol. 239E]

COMMISSION EXHIBIT 127-A.

DSM LETTER**United States Rubber Company**

NAUGATUCK FOOTWEAR PLANT  
NAUGATUCK, CONNECTICUT

TELEPHONE  
NAUGATUCK PARK 9-2281

January 1, 1959

BROWN SHOE COMPANY FRANCHISE DEALERSWATERPROOF FOOTWEAR -- 1959 SEASON

For the 1959 Season U. S. Brand Waterproof Footwear will be offered to Brown Franchise Dealers at the January 1, 1959 prices to retailers. The procedure covering the solicitation of Dating orders is given below:

DATING ORDERS

Factory  
Make-Up  
Discount

Less than 144 pairs or in other than case lots of an item .....	3%
144 pairs or more (but less than 480 pairs) in case lots of an item ...	5%
480 pairs or more in case lots of an item .....	8%

NOTE

It will be permissible to consider as the equivalent of case lots multiples of 12 pairs of any individual style, color, gender, and last.

WRITING OF DATING ORDERS

Dating orders will be written on U. S. Dating Order Form 1090, Rev. 1/59, in triplicate. Salesmen will forward the original and duplicate of each page of each order to the Branch and retain the triplicate as their own copy.

Branches will edit orders promptly as received and will then arrange for two (2) Ozalid copies to be made of each page of each order. The original translucent pages, together with one set of the Ozalid copies, are to be forwarded promptly to the Rubber Department, Brown Shoe Company, St. Louis, Missouri, with a brief note of transmittal. The duplicate (yellow) copy of each order is to be retained in a Brown Shoe "Pending Order File". The second set of Ozalid copies is to be mailed to Naugatuck promptly as the "Sales Analysis" copy.

Brown Shoe Company orders will be recorded on Dating Sales worksheets at the time the orders are edited.

The name of the Branch should be clearly identified on all copies of orders being mailed to the Brown Shoe Company.

DMA Letter

- 2 -

January 1, 1959

**Brown Shoe Company Franchise Dealers**  
**Waterproof Footwear — 1959 Season**

WRITING OF DATING ORDERS (Continued)

Brown Shoe will indicate confirmation on the original translucent copy of each order received by inserting their order number — the original translucent copy will be returned promptly to the originating Branch. The Ozalid copy sent to the Brown Shoe Company will be retained in their possession for their records.

At the time the original translucent copy of order carrying Brown Shoe Company order number is received back in the Branch, the duplicate (yellow) copy of order form written by the salesman should be returned to the customer with the usual form of Branch acknowledgment. The original translucent copy should then be referred to Branch Credit Department.

The "Sales Analysis" copy of order when received back from Naugatuck should be placed in Brown Shoe "Pending Credit Approval File". As original translucent copies fully credit approved are received back in the Trade Service Section, these should be held with the "Sales Analysis" copy in the Brown Shoe "Pending Credit Approval File" until such time as Brown Shoe Company has advised that they have given final credit approval to the individual order. Brown Shoe Company will advise by special form as they are in position to apply final credit approval to the individual order.

The original translucent copies of Brown Shoe Company Dating orders are not to be processed on to Naugatuck for shipment until such time as credit approval slip has been received from Brown Shoe Company. As is required on all customers' orders entered with Naugatuck for direct shipment, full credit approval of Branch Credit Department must be noted in space provided on order form before original translucent copy is mailed to Naugatuck.

As original translucent copies are mailed to Naugatuck, Branches should make certain that Brown Shoe Company's order number is noted on the Ozalid "Unfilled Order File" copy. This copy should also be noted as to date original translucent was mailed to Naugatuck. This copy should then be filed — by shipping period — in "Unfilled Order File".

WRITING OF AT-ONCE ORDERS

At-Once orders will be written on our regular order form. Do not write At-Once orders on the Dating order form and do not send At-Once orders to the Brown Shoe Company for confirmation.

BILLING TO THE BROWN SHOE COMPANYDATING ORDER SHIPMENTS

Bill to the Brown Shoe Company, St. Louis, at prices to retailers less factory make-up discount on qualifying orders, subject to terms of 2½ November 10, net December 1, 1959.

AT-ONCE SHIPMENTS

Bill to the Brown Shoe Company, St. Louis, at prices to retailers, subject to terms of 2½ 10 days, E. O. M.

## Letter

- 3 -

January 1, 1959

**Shoe Company Franchise Dealers**  
**Waterproof Footwear — 1959 Season**

ILLING TO THE BROWN SHOE COMPANY (Continued)

If the Franchise Dealer earned 8% factory make-up discount on the Dating order, it will be satisfactory to allow 8% on fill-in orders in case lots or in multiples of 12 pairs of a style, color, gender, and last, to meet competitive conditions.

IMPORTANT

original and duplicate copies of the invoice will be sent to the Brown Shoe Company, St. Louis, and a triplicate copy to the store receiving the shipment. The invoice sent to the store will be a complete copy of the invoice that we send to the Brown Shoe Company showing the factory make-up discount and terms. The invoices should carry the following phrase:

"Regular invoice will follow from the Brown Shoe Company"

\*\*\*\*\*

Make sure that your salesmen have an up-to-date list of Brown Franchise Stores in their territory.

Very truly yours,

Lester A. Suhre  
Branch Footwear Sales





## United States Rubber Company

NAUGATUCK FOOTWEAR PLANT  
NAUGATUCK, CONNECTICUT

DSM LETTER

August 1, 1955

### BROWN SHOE COMPANY - FRANCHISE STORES U. S. KEDS - 1955-56 SEASON

The 1955-56 U. S. Keds line will be offered to Brown Franchise Stores at regular prices and terms under our policy. Complete instructions are given below:

#### DATING ORDERS

Keds dating orders will be accepted from August 1 to December 31 inclusive for shipment from December 1, 1955 to April 25, 1956 inclusive.

	Factory Make-up Discount
Less than 144 pairs or in other than case lots of an item .....	3%
144 pairs or more (but less than 480 pairs) in case lots of an item	5%
480 pairs or more in case lots of an item .....	8%

#### WRITING OF DATING ORDERS

Dating orders will be written on the Brown Shoe Company, Rubber Department, four-part order form, and the salesman will add one extra tissue. The five copies will be distributed as follows:

The extra tissue retained by the salesman.

The pink copy to be left with the dealer.

The salesman will send the blue, yellow and regular tissue to his local branch. (The branch will retain the regular white tissue copy and will forward the blue and the yellow copies of the Brown orders to the Rubber Department, Brown Shoe Company, St. Louis, Missouri.)

The salesman will use his regular order number in regular sequence, prefixing this number with the letter "B". The salesman will write orders in the same manner as for other dealers, showing terms and factory make-up discount where it applies.

The salesman's name should be legibly written in the lower right-hand corner of the Brown order form; and underneath the salesman's name should appear the name of the branch.

The Brown Shoe Company will rewrite the dating orders on our order forms and return them to the branch of origin.

#### WRITING OF AT-ONCE ORDERS

At-once orders will be written on our regular order form. Do not write at-once orders on the Brown Shoe Company order form, and do not send at-once orders to the Brown Shoe Company for confirmation.

WRITING OF AT-ONCE ORDERS (Cont'd.)

On at-once orders for over \$100.00 you will communicate with the Brown Shoe Company, St. Louis, for credit approval.

BILLING TO THE BROWN SHOE COMPANYDATING ORDER SHIPMENTS

Bill to the Brown Shoe Company, St. Louis, at prices to retailer, less factory make-up discount on qualifying orders, subject to terms of 2% May 10, net June 1, 1956.

AT-ONCE SHIPMENTS

Bill to the Brown Shoe Company, St. Louis, at prices to retailer, subject to terms of 2% 10 days E.O.M.

If the Franchise Dealer earned 8% factory make-up discount on the dating order, it will be satisfactory to allow 8% on fill-in orders in case lots or in multiples of 12 pairs of a style, color, gender and width to meet competitive conditions.

IMPORTANT

The original and duplicate copies of the invoice will be sent to the Brown Shoe Company, St. Louis, and triplicate copy to the store receiving the shipment. The invoice sent to the store will be a complete copy of the invoice that we send to the Brown Shoe Company showing factory make-up discount and terms. The invoices should carry the following phrase:

"Regular invoice will follow from the Brown Shoe Company."

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Please see that your salomen have an up-to-date list of Brown Franchise stores in their territory.

Very truly yours,

J. J. TARRANT

Footwear Sales

JJT:ano

<u>Store</u>	<u>Date Added</u>
<u>Pennsylvania (Cont.)</u>	
Gold's Shoes, Inc. 310 E. Eighth Ave. Homestead, Pa.	2/13/56
Samuel Jackson Jackson's Shoe Store 320 Main St. Irwin, Pa.	6/19/59
Hub Shoe Co. 31-33 Fraley St. Kane, Pa.	6/17/57
Richards 306 5th Ave. McKeesport, Pa.	5/27/59
Bishop Shoe Co. 212 Brownsville Rd. Mt. Oliver, Pa.	1/4/56
Shugarts Shoes Front & Laurel Philipsburg, Pa.	7/2/56
Blynn's Shoe Store, Inc. 710 Homewood Ave. Pittsburgh, Pa.	2/27/59
Steele's Buster Brown Shoes 8001 McKnight Rd. Pittsburgh, 37, Pa.	3/22/55
Harl's Shoe Store Pantall Block Punxsutawney, Pa.	9/4/56
Karen's Shoe Store 610 Penn Ave. Turtle Creek, Pa.	8/21/59
Dutrey's Shoes 71 W. Main Arcade Bldg. Waynesboro, Pa.	2/29/56
<u>South Dakota</u>	
Juel's Shoe Store, Inc. DBA Juel's Shoes 413 Main Brookings, S. Dak.	2/6/58

Letter:

- 2 -

4/1/57

Brown Shoe Company - Franchise Dealers  
S. Keds - 1957-58 Season

ENDING OF DATING ORDERS (Continued)

At the time the original translucent copy of order carrying Brown Shoe Company order number is received back in the Branch, the duplicate (yellow) copy of order form written by the salesman should be returned to the customer with the usual form of Branch acknowledgment. The original translucent copy should then be referred to Branch Credit Department.

The "Sales Analysis" copy of order when received back from Naugatuck should be placed in Brown Shoe "Pending Credit Approval File". As original translucent copies fully credit approved are received back in the Trade Service Section, these should be held with the "Sales Analysis" copy in the Brown Shoe "Pending Credit Approval File" until such time as Brown Shoe Company has advised that they have given final credit approval to the individual order. Brown Shoe Company will advise by special form as they are in position to apply final credit approval to the individual order.

The original translucent copies of Brown Shoe Company dating orders are not to be processed on to Naugatuck for shipment until such time as credit approval slip has been received from Brown Shoe Company. As is required on all customers' orders entered with Naugatuck for direct shipment, full credit approval of Branch Credit Department must be noted in space provided on order form before original translucent copy is mailed to Naugatuck.

As original translucent copies are mailed to Naugatuck, Branches should make certain that Brown Shoe Company's order number is noted on the Serial "Unfilled Order File" copy. This copy should also be noted as to date original translucent was mailed to Naugatuck. This copy should then be filed - by shipping period - in "Unfilled Order File".

ENDING OF AT-ONCE ORDERS

At-once orders will be written on our regular order form. Do not write At-once orders on the Dating order form and do not send At-once orders to the Brown Shoe Company for confirmation.

BILLING TO THE BROWN SHOE COMPANYENDING ORDER SHIPMENTS

Bill to the Brown Shoe Company, St. Louis at prices to retailer less factory make-up discount on qualifying orders subject to terms of 2% May 10, net June 1, 1958.

AT-ONCE SHIPMENTS

Bill to the Brown Shoe Company, St. Louis, at prices to retailer subject to terms of 2% 10 days, E. O. M.

The Franchise Dealer earned 8% factory make-up discount on the Dating order, it will satisfactory to allow 8% on fill-in orders in case lots or in multiples of 12 pairs a style, color, and gender to meet competitive conditions.

RGW letter

- 3 -

9/1/58

Brown Shoe Company - Franchise Dealers  
U. S. Keds - 1957-58 Season

IMPORTANT

The original and duplicate copies of the invoice will be sent to the Brown Shoe Company, St. Louis, and triplicate copy to the store receiving the shipment. The invoice sent to the store will be a complete copy of the invoice that we send to the Brown Shoe Company showing factory make-up discount and terms. The invoices should carry the following phrase:

"Regular invoice will follow from the Brown Shoe Company"

Please see that your salesman have an up-to-date list of Brown Franchise Dealers in their territory.

Very truly yours,

Lester A. Suhre  
Footwear Sales

LAS/ann

W/15

NAME AND ADDRESS	YEAR	L.B. Jr.	L.B. Sr.	CLINIC	TOTAL
Shoe Store	1951	619	461	114	1,224
20 S. Main	1952	855	435	240	1,530
Plymouth, Mich.	1953	0	12	234	246
(Pop. 6,637)	1954	0	18	222	240
	1955	0	18	234	252
	1956	0	50	331	381
	1957	0	25	203	228
	1958	0	12	176	188
	1959	0	107	207	314
Shoe Store	1957	289	23	42	354
Sciukro, Miss.	1958	0	0	115	115
(Pop. 6, 753)	1959	0	0	85	85
Shoe Store	1956	264	207	208	679
220 O 17th Ave.	1957	26	20	137	183
Enroe, Wisc.	1958	195	37	128	360
(Pop. 7037)	1959	188	5	129	322
Shoe Store	1954	1,709	7	611	2,327
216 Shattuck	1955	999	2	514	1,515
Berkeley, Calif.	1956	657	0	565	1,222
(Pop. 113,805)	1957	738	61	503	1,302
	1958	743	93	360	1,196
	1959	614	99	415	1,128
Shoe Store	1953	0	0	258	258
11 Railroad Ave	1954	0	0	156	156
Pittsburgh, Calif.	1955	0	0	199	199
(Pop. 12,763)	1956	0	0	106	106
	1957	0	0	137	137
	1958	0	0	102	103
	1959	0	0	65	65
Shoe Store	1955	0	0	97	97
2 W. Main	1956	0	0	197	197
Arlock, Calif.	1957	0	0	136	136
(Pop. 6235)	1958	0	0	112	112
	1959	0	0	96	96



FIRM NAME AND ADDRESS	YEAR	L.B. JR.	L.B. SR.	CLINIC	TOT
Hudson's	1957	0	0	163	163
Burley, Idaho	1958	0	0	152	152
(Pop. 5,924)	1959	0	0	125	125
McCoy's Midwest Shoes, Inc.	1957	0	0	111	111
Centralia, Ill.	1958	0	0	123	123
(Pop. 13,863)	1959	0	0	47	47
David's Shoes	1956	0	190	320	510
Ottawa, Ill.	1957	0	234	245	479
(Pop. 16,957)	1958	0	99	268	367
	1959	0	90	233	323
Lilje's Shoe Store	1956	0	0	161	161
21 N. Main	1957	0	0	78	78
Carbondale, Pa.	1958	0	0	55	55
(Pop. 16,296)	1959	0	0	67	67
Heydrick Shugarts, Inc.	1957	0	54	120	174
Philipsburg, Pa.	1958	0	0	102	102
(Pop. 3,988)	1959	0	0	93	93
R. L. Holmes Shoe Store	1956	273	29	71	373
Morristown, Tenn	1957	10	2	80	92
(Pop. 13,019)	1958	47	1	169	217
	1959	7	1	70	78

Year	Wholesale Price Amount	Detail Price Amount	Total Price Amount
1954	105478	5559116	139121
1955	13980	799611	105478
1956	17221	10851807	1096401
1957	19561	1096401	1096401
1958	19561	1096401	1096401
1959	19561	1096401	1096401
1960	19561	1096401	1096401
1961	19561	1096401	1096401
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1974	19561	1096401	1096401
1975	19561	1096401	1096401
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2016	19561	1096401	1096401
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2020	19561	1096401	1096401
2021	19561	1096401	1096401
2022	19561	1096401	1096401
2023	19561	1096401	1096401
2024	19561	1096401	1096401
2025	19561	1096401	1096401
2026	19561	1096401	1096401
2027	19561	1096401	1096401
2028	19561	1096401	1096401
2029	19561	1096401	1096401
2030	19561	1096401	1096401
2031	19561	1096401	1096401
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2057	19561	1096401	1096401
2058	19561	1096401	1096401
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2062	19561	1096401	1096401
2063	19561	1096401	1096401
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2065	19561	1096401	1096401
2066	19561	1096401	1096401
2067	19561	1096401	1096401
2068	19561	1096401	1096401
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2081	19561	1096401	1096401
2082	19561	1096401	1096401
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2088	19561	1096401	1096401
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2090	19561	1096401	1096401
2091	19561	1096401	1096401
2092	19561	1096401	1096401
2093	19561	1096401	1096401
2094	19561	1096401	1096401
2095	19561	1096401	1096401
2096	19561	1096401	1096401
2097	19561	1096401	1096401
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2161	19561	1096401	1096401
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2165	19561	1096401	1096401
2166	19561	1096401	1096401
2167	19561	1096401	1096401
2168	19561	1096401	1096401
2169	19561	1096401	1096401
2170	19561	1096401	1096401
2171	19561	1096401	1096401
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2177	19561	1096401	1096401
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2199	19561	1096401	1096401
2200	19561	1096401	1096401
2201	19561	1096401	1096401
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STORES ON BROWN FRANCHISE PROGRAM AS OF JANUARY 1, 1960  
INDICATING THOSE STORES WHICH JOINED THE PROGRAM AFTER JANUARY 1, 1955

<u>Store</u>	<u>Date Added</u>
<u>Alabama</u>	
Sikes & Bratton Shoe Co. Roebuck Shopping Center 9166 4th Ave. So. Birmingham, Ala.	1/7/57
De Shields-Larson Shoes Eastbrook, Inc. 407 Coliseum Blvd. Montgomery 10, Ala.	6/19/59
Foots Shoes 312 Montgomery Sheffield, Ala.	1/6/58
<u>Arizona</u>	
David Shoes Park Central 32 Park Central Mall Phoenix, Ariz.	12/21/56
Goot Shoes 19 S. Scottsdale Rd. Scottsdale, Ariz.	12/30/58
<u>Arkansas</u>	
Monday-Powell S. S., Inc. 1101 Oak St. Conway, Ark.	1/4/55
<u>California</u>	
Jerry's Shoes 842 Valley Blvd. Alhambra, Calif.	6/11/59
Clark's Children's Bootery, No. 2 1212 S. Brookhurst Corral Shopping Center Anaheim, Calif.	6/26/59
Lincoln Park Shoe Corp. DBA Buster Brown Shoe Store 8956 Knott Ave. Buena Park, Calif.	

Store  
California

John &  
Fillmor  
320 Cen  
Fillmor  
Cashion  
712 Wes  
Fig Gar  
Fresno,  
Junior  
418 W.  
Fullert  
Lange S  
John J.  
125 W.  
Gilroy,  
Peters  
146 N.  
Glenda  
Phillip  
16904  
Granada  
Cassidy  
121 W.  
Hanfor  
Jerry'  
65 Pier  
Hermos  
Axline  
276 S.  
Laguna  
Burton  
2200 F  
Liverm  
Conrad  
P. O. 1  
128 No  
Lompoc  
Bodell  
DBA Bo  
4148 V  
Long B

Store
Date Added
California (Cont.)

John & Roma Ipswitch  
Fillmore Bootery  
320 Central Avenue  
Fillmore, Calif.

9/16/55

Cashions Shoe Store  
712 West Shaw  
Fig Garden Shopping Center  
Fresno, Calif.

12/21/56

Junior Bootery of Fullerton  
418 W. Commonwealth  
Fullerton, Calif.

1/4/56

Langs Shoe Store  
John J. Lang  
125 N. Monterey  
Gilroy, Calif.

2/26/58

Peters Shoe Store  
146 N. Brand  
Glendale, Calif.

9/16/55

Phillips Bootery  
16904 Devonshire  
Granada Hills, Calif.

12/16/58

Cassidy's Shoe Store  
121 W. 7th St.  
Hanford, Calif.

10/13/58

Jerry's Shoes  
65 Pier St.  
Hermosa Beach, Calif.

8/19/58

Axline's Fine Shoes  
276 S. Coast Blvd.  
Laguna Beach, Calif.

10/6/59

Burton's Shoe Store  
2200 First St.  
Livermore, Calif.

4/29/55

Conrad's Bootery  
P. O. Box 32  
128 North 'I' St.  
Lompoc, Calif.

10/27/59

Bodell's Shoes, Inc.  
DBA Bodel Shoes  
4148 Viking Way  
Long Beach, Calif.

2/25/59

<u>Store</u>	<u>Date Added</u>
<u>California (Cont.)</u>	
Funal Shoes c/o Frances Shop 430 Pine Long Beach, Calif.	11/25/55
Rancho Shoes Los Altos Rancho Fremont & Springer Rd. Los Altos, Calif.	10/1/56
Rhee's Shoes S. Greenberg & K. Randolph, Props. 1504 E. Florence Los Angeles, Calif.	8/7/56
Fuhrman's Lynwood Bootery E. Fuhrman, Jr. & Martha Fuhrman 11335 Long Beach Blvd. Lynwood, Calif.	9/29/55
Rancho Shoes 711 Santa Cruz Ave. Menlo Park, Calif.	12/28/59
Sandlers Shoe Store 600 Whittier Montebello, Calif.	7/15/57
Newhall Shoe Store 24336 San Fernando Blvd. Newhall, Calif.	9/11/59
Chapman's Shoes 1431 Grant Ave. Novato, Calif.	2/21/58
Buster Brown Shoe Store 141 S. Glassell Orange, Calif.	9/3/59
Johnson Shoe Store 715 N. 4th St. Orland, Calif.	6/19/59
Dan's Shoes Linda Mar Shopping Center 1285 Linda Mar Blvd. Pacifica, Calif.	4/6/56

<u>Store</u>	<u>Date Added</u>
<u>California (Cont.)</u>	
Berdon's Shoes c/o Hertel-Barnett 250 E. Colorado Blvd. Pasadena, Calif.	11/18/57
Cassidy Shoe Store 403 W. Main Porterville, Calif.	1/17/58
Carls Shoes 347 Walnut Red Bluff, Calif.	3/20/56
Redwood Bootery Lawrence & Pat Francesconi 175 Wildwood Ave. Rio Dell, Calif.	9/19/55
Leon's Shoes Leon Dorian 1971 High St. Selma, Calif.	6/21/56
Samuels Shoes 14510 Ventura Blvd. Sherman Oaks, Calif.	6/26/59
Hammond's 142 W. Main St. Turlock, Calif.	5/31/55
Stevens Bootery 17230 Saticoy Van Nuys, Calif.	6/13/55
McQueen's Shoes Gorman McQueen 15584 Seventh St. Victorville, Calif.	1/16/58
Lee's Shoes 1014 W. Garvey Blvd. West Covina, Calif. P. O. Covina, Calif.	7/12/57
Johnson Family Shoe Store Willows, Calif.	8/13/56



<u>Store</u>	<u>Date Added</u>
<u>Connecticut</u>	
Gordon's Bootery, Inc. 936 Chapel St. New Haven, Conn.	9/11/57
Prague Shoe Co., Inc. New London Shopping Center New London, Conn.	1/31/57
<u>Delaware</u>	
Ettenger's Shoe Store 207 Lockerman St. Dover, Del.	3/12/56
Pilnick's Shoe Store 48 E. Main St. Newark, Del.	9/25/58
Carl Cobin, Inc. 834 Market St. Wilmington, Del.	12/27/55
<u>Florida</u>	
Carlton's Shoe Store Mr. Edward Joseph, Prop. 625 Cleveland Ave. Clearwater, Fla.	7/6/59
Sam Schatzman Shoe Dept. No. 2 c/o Belks Dept. Store 5741 Bird Road Coral Gables, Fla.	8/19/57
Mc Coy's Shoes, Inc. 2249 First St. Ft. Myers, Fla.	6/6/55
Utsey's 3573 St. Johns Ave. Jacksonville, Fla.	10/17/57
Utsey's 216 W. Adams Jacksonville, Fla.	10/17/57
Utsey's c/o Leib's Dept. Store 770 N. Edgewood Jacksonville, Fla.	6/6/58
Utsey's 1984 San Marco Blvd. Jacksonville, Fla.	10/17/57

<u>Store</u>	<u>Date Added</u>
<u>Florida (Cont.)</u>	
Family Shoe Store 403 W. Main St. Leesburg, Fla.	12/30/58
Mr. Samuel Schatzman c/o Belk's Biscayne Plaza Shop. Ctr. Biscayne Blvd. at 79th St. Miami, Fla.	1/8/57
Gibson Cates Shoe Store 12 N. Magnolia Ocala, Fla.	5/24/57
Knight & Hendley Shoes, Inc. c/o William Henry's Dept. Store Central Plaza Shopping Center St. Petersburg, Fla.	8/2/57
McCoy's Shoes c/o Sport Shop Sarasota, Fla.	5/25/59
<u>Georgia</u>	
Mason's Morton M. Friedman, Prop. Douglas, Ga.	8/2/56
Minkovitz Shoe Dept. 1 South Main St. Statesboro, Ga.	8/2/56
<u>Idaho</u>	
Hudson's Dept. MD-2 1237 Overland Burley, Idaho	7/25/56
Ashlinan's Shoe Co. Rexburg, Idaho	3/3/58
<u>Illinois</u>	
Leo Noble Shoe Store De Kalb Shopping Center De Kalb, Ill.	12/28/59
Lad & Lassie Junior Footwear 10 E. Chicago St. Elgin, Ill.	5/20/59

<u>Store</u>	<u>Date Added</u>
<u>Illinois (Cont.)</u>	
J. H. Knippen c/o Ruby's 149 N. York Elmhurst, Ill.	9/5/58
Jo-Mar Shoes, Inc. 637 2nd St. LaSalle, Ill.	12/17/59
David's Shoes 611 LaSalle St. Ottawa, Ill.	1/18/57
Doug's Town & Country Shoes 507 W. Gallatin Vandalia, Ill.	12/23/59
Masters Shoe Co. 22 N. Genesee St. Waukegan, Ill.	6/4/58
<u>Indiana</u>	
Kaye's Shoe Store Southgate Plaza Ft. Wayne, Ind.	3/20/56
Keyes 1227 E. State Ft. Wayne, Ind.	2/29/56
B & B Shoes 20 E. Washington Green Castle, Ind.	7/2/56
Schultz Bros. 216 E. Main St. Madison, Ind.	2/23/55
Fall City Shoe Corp. 319 Pearl St. New Albany, Ind.	8/30/57
B & B Shoes 1332 Broad St. New Castle, Ind.	12/19/55
Taylor's Shoe Store 725 Main St. Rochester, Ind.	11/1/56

StoreDate AddedIndiana (Cont.)

Wake's Shoe Store  
42 W. Canal St.  
Wabash, Ind.

3/3/57

Iowa

D. B. Miller Co.  
c/o Grocers  
208-10 2nd Ave., S. E.  
Cedar Rapids, Iowa

5/21/56

Hendersons Shoe Store  
117 1st St., N. W.  
Hampton, Iowa

11/25/59

Bauer's Shoe Store  
Harlan, Iowa

6/19/59

B & H Shoes  
Onawa, Iowa

7/18/55

Stewarts Bootery  
Oskaloosa, Iowa

7/14/55

Pella Bootery  
707 Franklin  
Pella, Iowa

8/2/56

Waggoner's  
113 Grand  
W. Des Moines, Iowa

6/20/56

Kansas

Hilligoss Shoes  
622 Commercial St.  
Atchison, Kansas

12/7/56

Lloyd's Great Bend Shoes, Inc.  
1421 Main  
Great Bend, Kansas

7/26/55

Lloyd's Shoes, Inc.  
126 W. Main  
Wichita 2, Kansas

7/26/55

Kentucky

B & B Shoes  
5330 So. Third St., Rn. E.  
Louisville, Ky.

1/13/55

StoreDate AddedKentucky (Cont.)

Madisonville Shoes  
Clark & Bailey, Props.  
Main St.  
Madisonville, Ky.

12/2/58

Louisiana

Quality Shoe Store  
756 Front St.  
Natchitoches, La.

1/17/58

Haase Shoe Store  
8119 Oak St.  
New Orleans, La.

9/13/57

Maryland

Le Compte Shoe Shop  
25 Race St.  
Cambridge, Md.

1/21/59

Shinnamons  
61 Baltimore St.  
Cumberland, Md.

3/3/58

Michigan

Don Shoes  
157 E. Main St.  
Benton Harbor, Mich.

5/14/57

Sherman Shoes  
115 W. Maple  
Birmingham, Mich.

7/15/58

Redden & Rawlinson Shoes  
16394 E. Warren  
Detroit 24, Mich.

8/11/58

The Economy Shoe Center  
Northwest Shopping Center  
Pierson & Clio Rd.  
Flint, Mich.

8/30/56

O'Connor Shoes  
213 So. Lafayette St.  
Greenville, Mich.

3/25/57

Cartwright's  
Colonial Village  
1631 W. Mt. Hope  
Lansing, Mich.

6/15/56

StoreDate AddedMichigan (Cont.)

Cartwright Shoe Store  
128 E. Broadway  
Mt. Pleasant, Mich.

7/19/56

Robert Shoe Co.  
c/o D. M. Christian Dept. Store  
Owosso, Mich.

7/12/57

Harrison Fisher Shoes, Inc.  
517 S. Washington  
Royal Oak, Mich.

12/28/59

Kronbach Shoe Co.  
2664 W. Jefferson  
Trenton, Mich.

6/13/58

Campbell Shoe Store  
1138 E. West Maple Rd.  
Walled Lake, Mich.

12/14/55

Fisher's Shoes  
3611 S. Wayne  
Wayne, Mich.

6/22/56

Minnesota

Warren Shoe Co.  
c/o Marvin Oreck's  
268 Southdale  
Edina, 10, Minn.

8/27/56

Carl E. Elmquist Shoes, Inc.  
1541 E. Lake  
Minneapolis 7, Minn.

10/4/55

Warren Shoes c/o Jackson Graves  
Highland Village  
Ford, Parkway & Cleveland  
St. Paul, Minn.

8/7/59

Joe Silvia  
c/o Maurice's  
Virginia, Minn.

12/2/58

Schusters, Inc.  
DBA Winona Bootery  
57 West Third St.  
Winona, Minn.

12/16/58



<u>Store</u>	<u>Date Added</u>
<u>Mississippi</u>	
Gilmore Shoes E-S N. Main St. Amory, Miss.	1/27/58
Gryder's Shoes 217 W. Howard St. Biloxi, Miss.	<del>5-11-55</del> <del>5/11/58</del>
Gryder Shoe Store 200 25th Ave. Gulfport, Miss.	6/6/57
Kleban Shoes Kosciusko, Miss.	5/31/55
Boma's, Inc. c/o Carter-Heide Co. Laurel, Miss.	12/16/58
Gryder's Shoes 318 Delmas Ave. Pascagoula, Miss.	5/25/59
<u>Missouri</u>	
Drinnin Shoe Co. 107 E. 3rd St. Cameron, Mo.	6/5/59
Wells Shoe Store Tiny Tot Shoe Service, Inc. 48 S. Florissant Rd. Ferguson 21, Mo.	11/11/57
Stoll's Shoe Store John N. Stoll, Prop. 111 Main St. Festus, Mo.	8/13/58
Ray Wilson Shoes 11144 Blue Ridge Hickman Mills, Mo.	11/5/57
Clark & Hall's Shoe Store 316 W. Reed St. Moberly, Mo.	2/25/55
Junior Boot Shop 1940 S. Glenstone Springfield, Mo.	6/20/56

<u>Store</u>	<u>Date Added</u>
<u>Montana</u>	
D & D Shoe Mart Anaconda, Montana	5/4/59
H & K Shoes Lewistown, Montana	11/17/55
D & D Shoe Mart Libby, Montana	5/4/59
D & D Shoe Mart Polson, Montana	5/4/59
<u>Nebraska</u>	
McKee's Family Footwear 1011 Central Ave. Auburn, Nebr.	7/13/59
Bauer's Shoe Store 612 Court St. Beatrice, Nebr.	1/27/56
Harris Shoes Blair, Nebr.	7/18/55
Wayne's Shoe Store C. Wayne Hoffman Cozad, Nebr.	9/23/55
Ron's Booterie 706 W. 2nd Hastings, Nebr.	1/20/58
B & H Shoes Plattsmouth, Nebr.	7/18/55
<u>New Jersey</u>	
Niedermans, Inc. 91-93 Church St. New Brunswick, N. J.	10/27/59
Climax Sales Corp. DBA Colby Shoes Essex Green Shopping Plaza West Orange, N. J.	12/27/57
<u>New Mexico</u>	
Rouse's Shoes 928 New York Ave. Alamogordo, N. Mex.	2/17/58

<u>Store</u>	<u>Date Added</u>
<u>New Mexico (Cont.)</u>	
Lester's Shoes 311 N. Main Roswell, N. Mex.	12/30/57
<u>New York</u>	
F & K Shoes, Inc. DBA Franklin Shoe Shop 936 Hempstead Turnpike Franklin Square, N. Y.	7/12/56
Buster Brown Roosevelt Field Roosevelt Field Shop. Center Garden City L. I., N. Y.	7/5/56
Carbone Shoe Store 47 E. Main St. Gouverneur, N. Y.	8/8/58
Emerling's 15-17 Main St. Hamburg, N. Y.	3/15/56
Buster Brown Mid Island Max Kossove, Jr. 519 Mid Island Shopping Plaza Hicksville L. I., N. Y.	10/9/56
Wagner's Shoe Store 39 W. Main St. Ilion, N. Y.	10/29/59
Green's Dept. Store 90 North St. Middletown, N. Y.	10/25/57
Broadway Buster Brown Bootery 5565 Broadway New York City 63, N. Y.	1/26/59
Buster Brown Dyckman St. Store Leonard Kaiser 162 Dyckman St. New York, New York	8/22/56
Milia's Shoe Store 128 Ford St. Ogdensburg, N. Y.	3 / 19/58
Buster Brown Rego Park 94-03 63rd Dr. Rego Park, New York, N. Y.	4/10/57

<u>Store</u>	<u>Date Added</u>
<u>New York (Cont.)</u>	
Rowe's Brownbilt Shoe Store 430 Broadway Saratoga Springs, N. Y.	11/14/58
Bernie's Buster Brown S. S. 1729 Union St. Schenectady, N. Y.	6/11/59
Steven Jeffrey Shoes 636 Forest Ave. West Brighton Staten Island, N. Y.	7/13/59
Elkind Bros., Inc. DBA Ames Shoes Fairmont Fair Shopping Center Syracuse 9, N. Y.	7/13/59
Gerard-Wallace Corp. DBA Buster Brown Cross County 20 Frank E. Xavier Dr. Yonkers, N. Y.	6/23/59
<u>North Carolina</u>	
Ashworth's, Inc. (Shoe Dept.) 210 S. Main St. Fuquay Springs, N. Car.	12/14/59
Peterson's Shoes 107 S. Main St. Lenoir, N. Car.	8/15/55
Long's Family Shoe Store 119 W. Broad St. Statesville, N. Car.	10/8/58
<u>Ohio</u>	
McKinley Shoe Store 41 West Main Ashland, Ohio	12/30/58
Milton's Shoe Store 113 Front St. Berea, Ohio	10/23/59
Clarence Faflik Shoes, Inc. No. 3 c/o Farmatown Shopping Center 7571 Ridgewood Drive Cleveland, Ohio	8/15/56

StoreDate AddedOhio (Cont.)

Clarence R. Faflik Shoes, Inc.  
4920 Turney Rd., Store 4  
Cleveland 25, Ohio

12/30/58

Wilson & Priess Shoe Co.  
322 Clinton  
Defiance, Ohio

12/4/58

Andrew Hauer  
c/o Style Center  
368 Broad St.  
Elyria, Ohio

1/17/58

Clear's Shoe Store  
515 S. Broadway  
Greenville, Ohio

6/7/55

Andrew Hauer  
c/o Style Center  
412 Broadway  
Lorain, Ohio

4/15/59

Smart & Waddell, Inc.  
DBA Joffe's Shoes  
19 S. Main St.  
Miamisburg, Ohio

2/13/58

Marlinn Shoe Store  
121 E. High Ave.  
New Philadelphia, Ohio

7/21/59

Clarence Faflik Shoes, Inc.  
26245 Great Northern Shop. Ctr.  
N. Olmsted, Ohio

9/30/58

Douglass Shoes  
28 E. High St.  
Oxford, Ohio

8/11/58

Masters Shoe Store, Inc.  
Boardman Shop. Plaza  
215 Boardman-Canfield Rd.  
Youngstown, Ohio

9/14/55

Oklahoma

L & H Shoes  
417 W. Broadway  
Muskogee, Oklahoma

7/6/56

Cox's Dept. Store  
2128 S. Yale  
Tulsa, Oklahoma

8/24/55

StoreDate AddedOregon

Arnold's Shoe Store  
47 N. E. Broadway  
Beaverton, Oregon

4/2/59

Bogatay's Shoes  
617 Main St.  
Klamath Falls, Oregon

6/16/58

Vandenburgh's Shoe Store  
Oswego, Oregon

5/21/57

Vandenburgh's Shoe Store  
6316 S. W. Capital Highway  
Portland, Oregon

9/20/55

Don's Shoe Store  
272 So. 1st St.  
St. Helens, Oregon

4/2/58

Pennsylvania

Jackson Shoe Store  
374 Franklin Ave.  
Aliquippa, Pa.

4/3/59

Jackson Shoe Store  
Ambridge, Pa.

4/3/59

Jackson's Shoe Stores, Inc.  
Room 36  
Northern Lights Shoppers City  
Baden, Pa.

10/10/56

Jackson Shoe Store  
1022 7th Ave.  
Beaver Falls, Pa.

4/3/59

Bishop Shoe Co.  
559 Lincoln Ave.  
Bellevue, Pa.

1/4/56

Jackson Shoe Store  
Cannonsburg, Pa.

4/3/59

Karen Shoe Store  
Ben Weinerman  
27 N. First St.  
Duquesne, Pa.

8/21/59

Jackson Shoe Store  
623 Lawrence Ave.  
Ellwood City, Pa.

4/3/59



StoreDate AddedPennsylvania (Cont.)

Gold's Shoes, Inc. 310 E. Eighth Ave. Homestead, Pa.	2/13/56
Samuel Jackson Jackson's Shoe Store 320 Main St. Irwin, Pa.	6/19/59
Hub Shoe Co. 31-33 Fraley St. Kane, Pa.	6/17/57
Richards 306 5th Ave. McKeesport, Pa.	5/27/59
Bishop Shoe Co. 212 Brownsville Rd. Mt. Oliver, Pa.	1/4/56
Shugarts Shoes Front & Laurel Philipsburg, Pa.	7/2/56
Blynns Shoe Store, Inc. 710 Homevood Ave. Pittsburgh, Pa.	2/27/59
Steele's Buster Brown Shoes 8001 McKnight Rd. Pittsburgh, 37, Pa.	3/22/55
Harl's Shoe Store Pantall Block Punxsutauney, Pa.	9/4/56
Karen's Shoe Store 610 Penn Ave. Turtle Creek, Pa.	8/21/59
Dutrey's Shoes 71 W. Main Arcade Bldg. Waynesboro, Pa.	2/29/56

South Dakota

Juel's Shoe Store, Inc. DBA Juel's Shoes 413 Main Brookings, S. Dak.	2/6/58
---	--------

<u>Store</u>	<u>Date Added</u>
<u>Tennessee</u>	
J. W. Harrison, Jr. - Special 204-06 E. Main Johnson City, Tenn.	7/6/55
Family Shoe Store J. L. Frizzell Lexington, Tenn.	1/17/58
Lowry's Shoes 3996 Park Ave. Memphis, Tenn.	1/7/55
Clayton & Co. Tullahoma, Tenn.	8/3/55
<u>Texas</u>	
Reid's Shoes 813 West Park Row Arlington, Texas	6/19/59
Sherman's Shoes 216 Preston Forest Village Dallas, Texas	12/4/58
Cooper-Terry Shoe Store 5024 Trail Lake Dr. Fort Worth, Texas	9/18/59
Cawyer Shoe Store 505 W. 4th St. Graham, Texas	5/15/57
Elwyn's Shoes 109 E. Jackson Harlingen, Texas	1/20/55
Chism's Shoes in No. Town Plaza 6926 San Pedro San Antonio, Texas	12/8/55
Chism's Shoes in Sunset Ridge, Inc. 6426 N. New Braunfels San Antonio 9, Texas	2/13/58
Latimer's Shoe Store ✓ 206 W. Broad St. Texarkana, Texas	10/21/58
Olmstead Shoe Store 120 North College Tyler, Texas	5/20/55

<u>Store</u>	<u>Date Added</u>
<u>Texas (Cont.)</u>	
Nash Shoe Co. c/o Farley's On Ninth 1912 9th St. Wichita Falls, Texas	7/12/56
<u>Virginia</u>	
G. G. Footwear c/o Betty Gay Shoe Dept. 625 State St. Bristol, Va.	12/9/59
McCollum-Farrell 546 Main St. Danville, Va. Attention: S. C. Palmore, Mgr.	5/25/59
McCollum-Farrell Shoe Store Martinsville, Va.	1/20/55
<u>Washington</u>	
Kettman's Shoe Store 244 E. Main Auburn, Wash.	7/8/57
Warn & Warn, Inc. DBA Davids Shoes 201 W. Kennewick Kennewick, Wash.	7/17/58
Jensens Shoes Flower Hill Shopping Center Othello, Wash.	6/20/56
Uahl Shoes & Service 12545 Bothell Way Seattle, Wash.	7/26/55
Rusan's Shoe Dept. 512 W. Riverside Spokane 1, Wash.	8/28/58
Hadley's Shoe Dept. 1100 Main St. Vancouver, Wash.	3/7/58
<u>West Virginia</u>	
Martin's Booterie 227 W. Main St. Clarksburg, W. Va.	9/19/56


<u>Store</u>	<u>Date Added</u>
<u>West Virginia (Cont.)</u>	
Martin's Booterie 114 Adams St. Fairmont, W. Va.	9/19/56
Blynn's Shoe Store 3082 Main St. Weirton, W. Va.	6/4/56
<u>Wisconsin</u>	
L. M. Breitenbach Shoe Dept. c/o Geenens Appleton, Wisc.	9/15/55
Sonny Breitenbach Shoes 128 E. College Appleton, Wisc.	3/5/57
McCoy's-Midwest Shoes, Inc. 318 State St. Beloit, Wisc.	12/8/55
Family Shoe Store, Inc. Medford, Wisc.	10/9/59
Kerr's Shoes 1020 17th Ave. Monroe, Wisc.	9/6/55
Meyer Shoe Store 206 Main St. Watertown, Wisc.	8/2/56
<u>Wyoming</u>	
Kelley's Shoes 1137 Sheridan St. Cody, Wyoming	6/23/59
Shores Shoes, Inc. 609 Graybull Ave. Graybull, Wyoming	7/1/57
N-Z Shoes 176 N. Main Sheridan, Wyoming	1/23/59

**Weyenberg**  
SHOE MFG. CO.

**REPORT OF SALES IN TERMS OF  
DOLLARS AND PAIRS MANUFACTURED  
BY CLASSES FOR YEARS 1948 THRU  
1959.**

<u>Year</u>	<u>Net Sales</u>	<u>Men's Dress</u>	<u>PAIRS OF SHOES MANUFACTURED</u>		
			<u>Men's Work</u>	<u>Childrens</u>	<u>Army</u>
1948	\$16,477,139.	1,891,148	269,757	316,330	
1949	13,976,342.	1,769,804	209,548	326,457	
1950	16,560,231.	1,981,185	240,225	413,606	
1951	16,654,960.	1,729,133	161,974	342,239	143,940
1952	16,745,703.	1,847,636	178,116	359,077	
1953	17,466,780.	2,038,499	181,509	235,597	
1954	15,642,366.	1,853,752	143,573	218,654	
1955	17,227,444.	2,165,233	194,101	238,487	
1956	16,494,769.	1,926,260	122,280	-	
1957	16,553,217.	1,869,669	133,964	-	
1958	16,349,709.	1,864,265	107,028	-	
1959	17,424,345.	1,834,601	113,512	-	

The above report is a true and complete report as reflected  
by the records of the Weyenberg Shoe Manufacturing Company.

  
\_\_\_\_\_  
W. D. Knickel, Secretary

April 26, 1960

[fol. 279E]

COMMISSION EXHIBIT 143.

## SHIPMENTS

## RECORD OF ANNUAL

1	2	3	4	6	YEAR	\$ VOLUME	GENERAL INFORMATION		
							SOLD SINCE	POPULATION	COUNTY
	172				1946	2132		6,900	ERIE
	181		120	120	1947	2814			
1	150	25	29	99	1948	2355			
	85	1	177	165	1949	2839			
	101	15	152	223	1950	3123			
	147	1	213	86	1951	3560			
	172		323	150	1952	4768			
	179		374	97	1953	4435			
	158		302	81	1954	3993			
	143	7	138	122	1955	3121			
	33	1	16	123	1956	1263			
	3		27	111	1957	956			
2	18		7	137	1958	1189			
	12		43	99	1959	1105			
					1960				
					1961				
					1962				
					1963				
					1964				
					1965				

EWEELING, RAYMOND J.

ADDRESS 15-17 MAIN ST

CITY &amp; STATE HAMBURG, NEW YORK

#23

SALESMAN YODEK

NUMBER  
PL4

SPECIAL TERMS (PC)

ZONE 4

DATE 1-60 RATING A+2

SPECIAL INSTRUCTIONS

ACCOUNT NO. P-581225

1911 808 SIGNATURE PAGE 143-18



## SHIPMENTS

## RECORD OF ANNUAL

1	2	3	4	5	6	YEAR	VOLUME	GENERAL INFORMATION	
						1946		SOLD SINCE	11-20-57
						1947		POPULATION	677,000
						1948		COUNTY	ALLEGHENY
						1949		TRADE NAME	
						1950		NAME	BLINN'S SHOE STORES, INC.
						1951		ADDRESS	710 N. HOMEMOOD
						1952		CITY & STATE	PITTSBURGH, PA.
						1953		SALESMAN	JIM HEIF
						1954		SPECIAL TERMS (PC)	ZONE
						1955		DATE	3 60
						1956		RATING	D+2
47	2	21	53	2	2	1957	636	SPECIAL INSTRUCTIONS	
						1958	2,782		
						1959	376		
						1960	None		
						1961			
						1962			
						1963			
						1964			
						1965			

1323

M-6141

NO.

## SHIPMENTS

## RECORD OF ANNUAL

## GENERAL INFORMATION

1	2	3	4	6	YEAR	VOLUME
					1946	
					1947	
					1948	
					1949	
					1950	
	16	89	88		1951	1281
	28	317	445	1	1952	6803
	68	433	605		1953	8358
	79	181	211		1954	3419
	13				1955	428
	4				1956	186
					1957	
					1958	
					1959	
					1960	
					1961	
					1962	
					1963	
					1964	
					1965	

SOLD SINCE OCT, 1951

POPULATION 37,400 COUNTY HARRISON

TRADE NAME

NAME GRDYER CO.

ADDRESS 314 LA MEISE STREET

CITY &amp; STATE BILOXI, MISS P22

SALESMAN KEEFER W50

SPECIAL TERMS (PC) ZONE 5

DATE RATING D 15

SPECIAL INSTRUCTIONS

also store at 401 W. 12

INACTIVE

ACCOUNT NO. W 4 810 34

**Weyenberg**  
SHOE MFG. CO.

John W. Anderson

June 19, 1958

JUN 24 1958

Re: Blinkinsop Shoe Store  
Marango, Iowa

*Bear  
april 53*

Dear John:

This account has been active for many years. Our customer and yours will indicate shipments from 1946 through 1957. The amount in 1957 was \$1920. Thus far this year our shipments have amounted to only \$193 and we have no orders on file.

To the best of your knowledge has anything transpired indicating you have lost this account to Brown Shoe Company or the Wohl Division of Brown Shoe Company because of some special arrangements that may have been made with these people or because of their having acquired this store. Will you be kind enough to advise us in return mail.

Yours very truly,

PSShannon:ccs

*I OVERLOOKED THIS  
ACCT ON EARLIER REPORT*

*THIS ACCT. SWITCHED TO  
BROWN BILT PLAN. I SELL THEM  
ALL THEIR WORK SHOES. BUT NOT  
DRESS SHOES.*

*THEY ARE UNDER BROWN  
FRANCHISE PLAN WHICH IS PRETTY  
MUCH STRAIGHT BROWN SHOE CO  
OPERATION-*

*Sincerely  
John W. Anderson*

R 25 1530-7 PM

Weyenberg  
SHOE MFG. CO.

April 22, 1960

Portage  
SHOE MANUFACTURING CO.

Please give this careful as well as your immediate attention.

Do you know of any merchant who, during the last three or four years or even five years, which was taken over by Brown franchise which resulted in loss of business for you and us.

Will you please indicate on the lower part of this letter, and return it to the writer immediately.

Sincerely yours,

RSShannon:em

Blinkensop Shoes - MARENGO Iowa  
STILL SELL Them WORK SHOES  
but no Russ Shoes

John W. Anderson  
BOX 156  
CLEAR LAKE, IOWA

SHIPMENT RECORD  
WEYENBERG ( ) PORTAGE

TRADE NAME  
NAME B. Blinkensop Shoe Store  
CITY & STATE Clear Lake, Iowa  
SOLD SINCE 1946 RATING 73  
SALESMAN John W. Anderson POPULATION 2,100

YEAR	GRADE					DOLLAR VOLUME
	1	2	3	4	5	
1953		5	1	3	311	2256--
1954		2		1	288	1948--
1955		3			257	1780--
1956		1		3	246	2246--
1957		3		3	260	1928--
1958		2			200	1429--
1959					151	1174--
1960				1	78	288-- through May

WEYENBERG SHOE MFG. CO.

MILWAUKEE

Portland 9, Oregon May 2, 1934

Attn: Ray Shannon

Dear Ray:

We have received back four of the questionnaires sent out to the salesmen regarding any accounts we may have lost in the last four or five years due to Brown franchising stores. We are listing below the information as passed on to us by the salesmen.

Les Weigand, in the Spokane territory, states that he has not lost any accounts and that Brown is not very active in his territory.

Paul Mehan states that Dahl's Shoes at 12545 Bothel Way, Seattle, Washington rated C-2, had been a good account of his but when Brown franchised the account they canceled all orders they had on file with him and have not bought anything since.

Sam Brown states that he knows of only two stores in recent years where he has lost business. About three years L. Johnson Store at Willows, California and the L. Johnson Store at Orland, California were changed over to Brown franchise stores and since that time his business is down to nothing.

Clark Penner, in the Portland territory, states that no account has been lost due to a Brown franchise in his area.

We still have not heard from Jim Clark but I thought it best to pass on what information we have immediately.

Very sincerely,

KEN WILLIAMS

*KW*

Jb

SHIPMENTS

GENERAL INFORMATION

RECORD OF ANNUAL

VOLUME

YEAR

6

4

3

2

1

## SHIPMENTS

## RECORD OF ANNUAL

1	2	3	4	6	YEAR	VOLUME	GENERAL INFORMATION			
							SOLD SINCE	POPULATION	2,100	COUNTY IOWA
	39	30	111	89	1946	1118	TRADE NAME			
	81	6	7	198	1947	1945	NAME			
	6	5	103	288	1948	1236	ADDRESS			
	5	23	14	185	1949	2304	CITY & STATE			
	23	11	102	180	1950	2467	SALESMAN			
	11	16	43	194	1951	2104	SPECIAL TERMS (PC)			
	16	5	3	311	1952	1648	DATE			
	5	2	1	289	1953	2237	RATING			
	2	3	1	257	1954	1427	SPECIAL INSTRUCTIONS			
	3	1	3	296	1955	1737				
	1	9	3	248	1956	2246				
	3	3	200	200	1957	1988				
			151	151	1958	1497				
					1959	1144				
					1960					
					1961					
					1962					
					1963					
					1964					
					1965					

ACCOUNT NO. 71-556871



## RECORD OF MONTHLY SHIPMENTS

FOR THE YEAR 1960

1	2	3	4	5	6	7	NO.	TOTALS
			1		38		JAN	291
			1		38		FEB	291
			1		70		MAR	534
							APR	
							MAY	
							JUN	
							JUL	
							AUG	
							SEP	
							OCT	
							NOV	
							DEC	
							TOT	

W 256870  
 WEYENBERG SHOE MFG. CO.  
 MILWAUKEE, WIS.

RECEIVED MAR 10 1960

POST OFFICE ADDRESS		STATE		POPULATION		SALESMAN								
Winona 37 W. Third St.		Minnesota				Baker								
NAME		SHIPPING DIRECTIONS												
Winona Bootery 98,689		Formerly known as The "B & D"												
B & D Shoe Store		Store name changed per Mr. Danaser customer 2/4/59												
BUSINESS		EXCLUSIVE		BUYER		REMARKS								
						Mrs. Bartholomen								
YEAR	RATING	JAN.	FEB.	MAR.	APR.	MAY	JUNE	JULY	AUG.	SEPT.	OCT.	NOV.	DEC.	SHIPMENTS
1950									33	31				
1951														
1952	D1 1/2													1195 14
1953	D1 1/2													137 3
1954	D1 1/2													163 1
1955	D1 1/2													1465 09
1956														2314 50
1957	D1 1/2													2200 75
1958														2090 85
1959														99 50
1960														

(10) 1347

## COMMISSION EXHIBIT 153.

POST OFFICE ADDRESS		STATE		POPULATION		SALESMAN								
Watertown 204 E. Main St.		Vt.				Hart								
NAME		SHIPPING DIRECTIONS												
Mayer's Shoe Store		FR. GEMAN												
BUSINESS		EXCLUSIVE		BUYER		REMARKS								
						George Mayers,								
YEAR	RATING	JAN.	FEB.	MAR.	APR.	MAY	JUNE	JULY	AUG.	SEPT.	OCT.	NOV.	DEC.	SHIPMENTS
1953	E3													397 20
1954	F3	E3												1316 14
1955	E3													2399 16
1956														216 45
1957	E3													
1958														
1959														
1960														
1961														
1962														
1963														

(11)

May 18, 1956

Mayer's Shoe Store  
205 Main Street  
Watertown, Wisconsin

Gentlemen:

Our representative, Mr. Walter J. Votavets, mentioned that you were thinking about going on the Brown plan. Naturally, we are interested in maintaining the favorable business relationship we have had with your account during the past 2½ years and, therefore, we hope you will not mind our passing on to you several items of interest which you may want to take into consideration.

First of all, we feel certain you will agree that your proximity to us has afforded you the opportunity for quick, economical deliveries. As you get farther away from your source of supply, it is only natural that it takes longer to get the shoes and the transportation cost per pair is higher.

Secondly, we want to remind you that we are still able to provide you with shoes in the all-important \$6.95 price category. Our line is presently stronger than ever in this price category and we believe you will agree that this is the category in which most of the young men's business is being done today.

Regardless of what your decision is, we want to be sure to take the opportunity to thank you for the valued business you have placed with us during these past several years and want to assure you that we will be looking forward to every further opportunity to be of service to you.

Yours very truly,

LAVERNE SHOE COMPANY

George A. Friedley

GA:fgg

(Handwritten Exhibit.)

(Letterhead of Meyers X-Ray Shoe Fitting.)

March 8, 1956

Leverenz Shoe Co.  
Sheboygan, Wis.

Gentlemen:

Please cancel the inclosed orders # 278 and 331.

Sorry, to have to cancel these shoes, but I find I am  
overbought and can't afford to pay for them.

Yours truly, G. H. Meyers.

Notation: Blue sheet sent to warehouse

[illegible]



SALES OFFICE  
NINTH FLOOR  
SHELL BUILDING  
EIGHT STREET BETWEEN TWELFTH AND THIRTEENTH  
"Just a step from the JEFFERSON,  
LENNOR and STATLER Hotels."  
ST LOUIS 3, MO.  
TELEPHONE CHESTNUT 7-2868

## THE JUVENILE SHOE CORPORATION OF AMERICA

GENERAL OFFICE  
CARNATION DRIVE  
AURORA, MISSOURI  
TELEPHONE ORIOLE 8-2181  
TELETYPE AUR MO 8561

May 9, 1960

Howard's Shoe Store  
Hillsboro, Illinois

Dear Mr. Howard:

This acknowledges receipt of your letter of May 4th, expressing your interest in CLINIC shoes.

We are sorry to advise that we will not be able to ship you the following, as we are not in a position to serve you at this time.

#308 - AA- 6, 6½, 7, 7½, 8, 8½, 9  
B- 5, 5½, 6, 6½, 7, 7½, 8, 8½, 9

#310 - Same sizes as #308 - one pair each.

Should our position change at a later date, we will be glad to get in touch with you.

Thanking you for your letter and your order and regretting that we are unable to serve you at this time, we are

Yours very truly,

THE JUVENILE SHOE CORPORATION  
OF AMERICA

*J. Wilkinson*  
J. Wilkinson

JW  
JFS  
AUR

Attn: AURORA and SARCOXIE, MISSOURI





UNITED STATE OF AMERICA  
BEFORE FEDERAL TRADE COMMISSION

In the Matter of  
BROWN SHOE COMPANY,  
a corporation.

Docket No. 7607

## STIPULATION OF FACTS

Counsel supporting the complaint and counsel for respondent agree and stipulate that if Roy St. Jean, Manager of the Market and Sales Analysis Department of respondent, were called as a witness in this proceeding, he would testify that the Respondent's Exhibit \_\_\_\_\_, attached hereto and made a part hereof, was prepared under his general direction, supervision and control from reports of the 1960 Census, the Standard Metropolitan Statistical Area report, and from a list of Brown franchise stores (CX 23-A to Z-24, 24A to Z-33), and counsel further agree that this stipulation and attached exhibit may be accepted by the Commission for the purpose of its determination and order herein as if such person had so testified and in lieu of such testimony.

This stipulation is made solely for the purpose of this proceeding, or any review thereof, and for no other action, case or proceeding.

RESPONDENT'S EXHIBIT

POPULATION OF CITIES AND TOWNS IN WHICH BROWN FRANCHISE STORES ARE LOCATED

Sources:  
(1) Report of 1960 Population Census  
(2) Standard Metropolitan Statistical Areas  
(3) Commissions Exhibits 23-A to Z-24,

## Sources:

- (1) Report of 1960 Population Census
- (2) Standard Metropolitan Statistical Areas
- (3) Commissions Exhibits 23-A to 2-24, 24-A to 2-33

BROWN FRANCHISE STORES

POPULATION OF CITIES AND TOWNS IN WHICH BROWN FRANCHISE STORES ARE LOCATED	RESPONDENT'S EXHIBIT			
	0 to 5,000	5,000 to 10,000	10,000 to 20,000	20,000 to 50,000
Peter & Sikes - Birmingham, Ala.				over 100,000
Sikes & Bratton - Birmingham, Ala.				340,087M do M
Baxter's - Andalusia, Ala.				
W. King Holt - Brewton, Ala.				
Baxter's - Dothan, Ala.				
Peters & Sikes - Homewood, Ala.				
DeShield's-Larson - Montgomery, Ala.				
M. N. DeShields c/o Alex Rice - Montgomery, Ala.				
DeShields & McLeod c/o Leon's - Selma, Ala.				
Footie Shoes - Sheffield, Ala.				
Wagner's - Tuscaloosa, Ala.				
David's - Phoenix, Ariz.				
David Shoes Park Central - Phoenix, Ariz.				
Monday S. S. - Batesville, Ark.				
Sherman's Shoes - Benton, Ark.				
Floyd A. White & Sons - Blytheville, Ark.				
M. P. Watts & Bros. - Camden, Ark.				
Monday-Powell S. S. - Conway, Ark.				
Cowan's S. S. - Fayetteville, Ark.				
Peters S. S. - Hot Springs, Ark.				
Joseph Footwear - Jonesboro, Ark.				
Hall & Monday S. S. - Newport, Ark.				
Grande's S. S. - Alameda, Calif				
Clarks Children's Footery - Anaheim, Calif				
Hornbrook's Shoes - Arcata, Calif				
Ricardo Footery - Bakersfield, Calif				
McQueen's Shoes - Barstow, Calif.				
Richard's Shoes - Bell, Calif.				
Kodgers S. S. - Berkeley, Calif				
Memphill's Shoes - Blythe, Calif.				
Desert Shoes - Brawley, Calif.				

M - Part of a Standard Metropolitan Area  
do- ditto, same city as above



	to 2,000	to 10,000	to 20,000	to 30,000	to 40,000	to 50,000	to 100,000	Over 100,000
Burton's S. S. - Oroville, Calif.	6,113							116,407M do M
Burton's Shoes c/o Hertel-Barnett - Pasadena, Calif.								
Burton's Shoes - Pasadena, Calif.								
Grande's Shoes - Pittsburg, Calif.								
Cash Mercantile Store - Placerville, Calif.	4,439		19,062M					
Cassidy S. S. - Porterville, Calif.		7,991						
Caris Shoes - Red Bluff, Calif.		7,202						
Burton's BBilt S. S. - Redding, Calif.			12,773					
Jerry's S. S. - Redondo Beach, Calif.								
Marold's S. S. - Redlands, Calif.								
Redwood Bootery - Rio Dell, Calif.				26,829M				
Winler's S. S. - Riverside, Calif.	3,222							
(now Carroll's Shoes)								
Green-Meyden, B.B.S.S. - Sacramento, Calif.								
Green-Meyden Shoes - Sacramento, Calif.								
(Country Club Center)								
R. D. Linnett c/o A. L. Brown & Sons - Salinas, Calif.								
Howe's Shoes - San Bernardino, Calif.								
James S. S. - Sanger, Calif.								
A. Goldberg DBA Kain's S. S. - San Pedro, Calif.	8,072M							
Charman's Shoes - San Rafael, Calif.								
Sebastian's Shoes - Santa Ana, Calif.								
Matchette BBilt S. S. - Santa Monica, Calif.								
Smith's Shoes - Santa Rosa, Calif.								
Smith's S. S. (Montgomery Village) - Santa Rosa, Calif.								
Lash's S. S. - Sebastopol, Calif.								
Leon's Shoes - Selma, Calif.	2,694							
Wesley's S. S. - Studio City, Calif.	6,934M							
Grande's Shoes - Sunnyvale, Calif.								
Valley Shoe Corp DBA Phillips Bootery - Sun Valley, Calif.								
Genes Shoes - Susanville, Calif.	5,598							
Foothill Bootery - Tujunga, Calif.								
Cassidy's S. S. - Tulare, Calif.			13,824					
Hammond's - Turlock, Calif.		9,116						
Davis S. S. - Ukiah, Calif.		9,900						
Diers Shoes - Upland, Calif.								
Stevens Bootery - Van Nuys, Calif.								
Bushells S. S. - Ventura, Calif.								
McQueen's Shoes - Victorville, Calif.	(nothing available)							
				29,114				

	0	5,000	10,000	20,000	30,000	40,000	50,000	Over
	to	to	to	to	to	to	to	100,000
	2,000	10,000	20,000	30,000	40,000	50,000	100,000	
Castro BBilt S. S. - Visalia, Calif.								
Lee's Shoes - West Covina, Calif.								
Glenn's S. S. - Whittier, Calif.								
Johnson Family S. S. - Willows, Calif.								
Burton's S. S. - Woodland, Calif.	4,139		15,791				50,643M	
Thornton's Shoes - Boulder, Colo.			13,524					
Kansay's Shoes - Colorado Springs, Colo.								
White's Shoes - Grand Junction, Colo.								
(now B & A Bootery)								
Randall's S. S. - Greeley, Colo.								
B & A Bootery No. 2 - Pueblo, Colo.				26,314			91,191M	
B & A Shoe Store - Pueblo, Colo.							do M	
Arthur's Youth Center - Bridgeport, Conn.								
Gustafson's S. S. - Manchester, Conn.								156,748M
Gordon's Bootery - New Haven, Conn.								152,048M
Gerry-Stevens - New Haven, Conn.								do M
Frague Shoe Co. - New London, Conn.								
Sprafkin BBilt S. S. - Wallingford, Conn.				29,920	34,182M			
Ettinger's S. S. - Dover, Delaware		7,250						
Pinick's S. S. - Newark, Delaware			11,404M					
Carl Cobin, Inc. - Wilmington, Delaware							95,827M	
Sam Schatzman Shoe Dept. No. 2 - Coral Gables, Fla.								
McCoy's Shoes - Ft. Myers, Fla.								
Utsey's - Jacksonville, Fla. (1984 San Marco)				22,523	34,793M			201,010M
Utsey's - Jacksonville, Fla. (221 Hogan new 216 Adams)								do M
Utsey's - Jacksonville, Fla. (3573 St. Johns)								do M
Utsey's c/o Leibo's Dept. Store - Jacksonville, Fla.								do M
Snyder's S. S. - Lakeland, Fla.						41,350		291,688M
Samuel Schatzman - Miami, Fla.								
c/o Balk's Biscayne Plaza Shop, Center								
Gibson Cates S. S. - Ocala, Fla.			13,598					181,298M
Knight & Hendley Shoes - St. Petersburg, Fla.								
c/o Wm. Henry's Dept. Store								
Stricklands BBilt S. S. - Tallahassee, Fla.						48,174		274,970M
Farners BBilt S. S. - Tampa, Fla.								

to 2,000 to 10,000 to 20,000 to 30,000 to 40,000 to 50,000 to 100,000 Over





	0	5,000	10,000	20,000	30,000	40,000	50,000	Over
	to	to	to	to	to	to	to	100,000
	5,000	10,000	20,000	30,000	40,000	50,000	100,000	
McCoy's Shoes - Robinson, Ill.		7,226						
Beasler's Shoes - Rochelle, Ill.		7,008						
McCoy's Midwest Shoes - Salem, Ill.		6,165						
Inyarta BBilt S. S. - Shelbyville, Ill.	4,821							
Di Plotti's S. S. - Taylorville, Ill.		8,801						
Wetzel's S. S. - Watseka, Ill.		5,219						
Masters Shoe Co. - Waukegan, Ill.							55,719M	
Knippen's Shoes - Wheaton, Ill.								
Remussen Shoes - Winnetka, Ill.			13,368M	24,312M				
B & B Shoes - Bedford, Inc.			13,024					
Baflich & Morrissey - Bluffton, Ind.		6,238						
Miller's Shoes - Crawfordville, Ind.			14,231					
Paramount S. S. - Crown Point, Ind.		8,443M						
Baflich & Morrissey BBilt S. S. - Decatur, Ind.		8,327						141,543M
Ben Becker Evansville, Inc. - Evansville, Ind.								161,776M
Kay's S. S. (Southgate Plaza) - Ft. Wayne, Ind.								do M
Kayes - Ft. Wayne, Ind.								do M
Village Shoes - Ft. Wayne, Ind.								
Kent's Shoes - Frankfort, Ind.			15,302					
Lenam Shoe Co. - Franklin, Ind.		9,453						
B & B Shoes - Green Castle, Ind.		8,506						
Merriman's Shoes - Greensburg, Ind.		6,605						
Dick's Bootery - Griffith, Ind.		9,483M						
Brown & Rowe Shoes - Huntington, Ind.			16,185					
B & B Shoe Corp. - Kokomo, Ind.					47,197			
Apple S. S. - Lebanon, Ind.		9,523						
Kennedy's S. S. - Linton, Ind.		5,736						
Combs S. S. - Logansport, Ind.				21,106				
B & B Shoes - Madison, Ind.								
Schultz Bros. - Madison, Ind.								
Alexander's S. S. - Martinsville, Ind.		7,525						
Fall City Shoe Corp. - New Albany, Ind.								
Stein's Shoes - New Albany, Ind.					37,812M			
B & B Shoes - New Castle, Ind.					do M			
Combs S. S. - Portland, Ind.								
Everly's S. S. - Richmond, Ind.		6,999						
Taylor's S. S. - Rochester, Ind.				20,349				
Kents B. E. S. S. - Rushville, Ind.							44,149	
B & W Shoe Co. - Seymour, Ind.		7,264						
Hub S. S. - Shelbyville, Ind.	4,883							
			11,629					
			14,317					
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								100,000





	\$5,000	10,000	20,000	30,000	40,000	50,000	60,000	70,000	80,000	90,000	100,000	Over
Moor's Shoes - Holland, Mich.												
Cartwright's - Lansing, Mich.												
Vogel's S. S. - Ludington, Mich.												
Burkhardt's S. S. - Midland, Mich.												
Cartwright S. S. - Mc. Pleasant, Mich.												
Eastwick's - Niles, Mich.												
Robert Shoe Co. - Oquoss, Mich.												
c/o D. M. Christian Dept. Store												
Fisher's S. S. - Plymouth, Mich.												
Harrison's Shoes - Royal Oak, Mich.												
Don A. Zahle Shoes - St. Joseph, Mich.												
c/o Kims & Hildebrand												
Raymond Shoe Co. c/o Wiechmann's - Saginaw, Mich.												
Willers Bilt S. S. - Sturgis, Mich.												
Erenbach Shoe Co. - Trenton, Mich.												
Campbell S. S. - Walld Lake, Mich.												
Fisher's Shoes - Wayne, Mich.												
Moffette S. S. - Ypsilanti, Mich.												
Biggaard S. S. - Albert Lea, Minn.												
Austin Bootery - Austin, Minn.												
Larson's S. S. - Beadji, Minn.												
Paul's S. S. - Brainerd, Minn.												
Arnesen's S. S. - Cloquet, Minn.												
Gleim's S. S. - Duluth, Minn.												
Warren Shoe Co. - Edina, Minn.												
c/o Marvin Orack's												
Burkhardt's Shoes - Faribault, Minn.												
Dailey S. S. - Fergus Falls, Minn.												
Stenborg's S. S. - Grand Rapids, Minn.												
Victor Clothing Co. - Little Falls, Minn.												
Carl E. Elmqvist Shoes - Minneapolis, Minn.												
Frisholm S. S. - Montevideo, Minn.												
Stora's S. S. - New Ulm, Minn.												
O & B Shoe Store - Rochester, Minn.												
Christiansons Bilt S. S. - St. Paul, Minn.												
(see Mischel's S. S.)												
Gilmore Shoes - Amory, Miss.												
Gryder's Shoes - Biloxi, Miss.												
Columbus Bilt. S. S. - Columbus, Miss.												
Massena Bilt S. S. - Corinth, Miss.												
Gryder S. S. - Gulfport, Miss.												



	to 5,000	to 10,000	to 20,000	to 30,000	to 40,000	to 50,000	to 100,000	Over 100,000
Cranford Bootery - Cranford, New Jersey								
B & H Shoe Shop - Hackensack, New Jersey								
Baggold Shoes - Linden, New Jersey								
Climax Sales Corp. - West Orange, New Jersey (DMA Buster Brown Essex Green)				26,424M	30,321M			
					39,931M			
					39,895M			
The Shoe Mart - Alamogordo, New Mexico (new House's Shoes)				21,723				
House's Shoes - Farmington, New Mexico				23,786	39,593			
Lester's Shoes - Roswell, New Mexico								
Socorro Mill S. S. - Socorro, New Mexico		5,271						
Moian's S. S. - Auburn, N. Y.			18,210		35,249			
Thomas & Dyer Mill S. S. - Batavia, N. Y.								
Buster Brown Fordham - Bronx, N. Y.								
Buster Brown Kingshighway - Brooklyn, N. Y.								
Buster Brown Shoes Salon - Brooklyn, N. Y.								
(1554 Pitkin)								
Buster Brown Shoes Salon - Brooklyn, N. Y.								
(4618-13th Ave.)								
Metrol Mill S. S. - Buffalo, N. Y.		9,370	19,181					
Kiland E. Shaddock - Canandaigua, N. Y.								
Olds & Palmer - Cortland, N. Y.		5,003	18,775M					
Weinberg's S. S. - Ellenville, N. Y.								
Ken's Shoes - Endicott, N. Y.								
Buster Brown Shoes - Far Rockaway, N. Y.								
B & B Fresh Meadows - Flushing, N. Y.								
Terry's S. S. Shoes - Flushing, N. Y.								
F & K Shoes - Franklin Square, N. Y.								
(DMA Franklin Shoe Shop)								
Buster Brown Forest Hills - Forest Hills, N. Y.								
Buster Brown Roosevelt Field - Garden City, N. Y.								
Jan Shoes - Glen Oaks, N. Y.				23,948M				
Carbone S. S. - Gouverneur, N. Y.	4,946							
Armie Mill S. S. - Gowanda, N. Y.	3,352M							

M-  
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532,759M  
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N.Y. City pop  
M-  
N.Y. City pop



Emarling's - Hamburg, N. Y.	0	5,000	10,000	20,000	30,000	40,000	50,000	Over	
Buster Brown Mid Island - Nicksville, N. Y.	to	to	to	to	to	to	to	to	
Van's Shoes - Ithaca, N. Y.	5,000	10,000	20,000	30,000	40,000	50,000	100,000	100,000	
Malben Shoes - Jackson Heights, N. Y.		9,145M					50,405M		
Richal Shoe Corp. - Jamaica, N. Y.				28,799					M- N.Y. City pop
Brownbilt Shoe Store - Jamestown, N. Y.						41,818			do
Rosses Bbilt S. S. - Kingston, N. Y.				29,260					
Taber & Brumburgh - Kenmore, N. Y.				21,261M					
Balsom Bootery - Larchmont, N. Y.		6,789M							
Green's Dept. Store - Middletown, N. Y.				23,475	30,979				
Fogarty Bbilt S. S. - Newburgh, N. Y.									
Hub Buster Brown Bootery - N. Y. City, N. Y.									
Buster Brown Dyckman S. S. - M. Y., N. Y.								7,781,984M	
Tichnor Shoes - M. Y., N. Y.								do M	
Taber & Brumburgh - Niagara Falls, N. Y.								do M	
(now Taber's Shoe Shop)								102,394M	
Orlin's Shoes - Norvich, N. Y.	9,175		16,122						
Millie's S. S. - Ogdensburg, N. Y.									
Brothers Bbilt Shoe Dept. - Olean, N. Y.			21,868						
Onaida Shoe Co. - Onaida, N. Y.			11,677M						
Kéwell Shoe Co. - Parkchester, Bronx, N. Y.									
Buster Brown Rego Park - Rego Park, N. Y.									M- N.Y. City pop
Royal Shoes - Richmond Hill, Queens, N. Y.								do	
Mercis S. S. - Rochester, N. Y.								do	
Culver Shoes - Rochester, N. Y.								318,611M	
Schwank's S. S. - Rochester, N. Y.								do M	
Townsend's S. S. - Rome, N. Y.								do M	
Molan's S. S. - Seneca Falls, N. Y.	7,439						51,646M		
(now Geo & Rutz Shoes)									
Lesar's S. S. - White Plains, N. Y.							50,485M		
Powell's Shoes - Clinton, North Carolina	7,461								
Stanley's Shoes - Greensboro, N. Carolina			10,257						
Peterson's Shoes - Lenoir, N. Carolina			10,882					119,374M	
Lee's Shoes - Monroe, N. Carolina			19,844						
Long's Family S. S. - Statesville, N. Carolina									
Steven's Shoes - Valley City, North Dakota	7,809								

0	5,000	10,000	20,000	30,000	40,000	50,000	100,000	Over
to	to	to	to	to	to	to	to	to
5,000	10,000	20,000	30,000	40,000	50,000	100,000	100,000	100,000

	0 to 5,000	5,000 to 10,000	10,000 to 20,000	20,000 to 30,000	30,000 to 40,000	40,000 to 50,000	50,000 to 100,000	Over 100,000
Alexander's Shoes - Cambridge, Ohio								876,050M
Clarence Faflik Shoes - Cleveland, Ohio (Permatown Shopping Center)								do M
Clarence Faflik S. S. - Cleveland, Ohio (20201 Van Alken Rd.)								do M
Clarence Faflik S. S. - Cleveland, Ohio (4256 Pearl Rd.)								do M
Clarence Faflik S. S. - Cleveland, Ohio (9711 Lordin)			14,362					do M
Yon's S. S. - Cleveland, Ohio								
Ferrar's Shoes - Clyde, Ohio	4,826							
Andrew Hauer c/o Style Center - Elyria, Ohio						43,782M		
Clear's S. S. - Greenville, Ohio			10,585		31,667M			
Clarence Faflik Shoes - Maple Heights, Ohio								
Smart & Waddell - Marietta, Ohio		9,893M	16,847					
Bartal's Shoes - Middletown, Ohio		7,828M	16,290M					
Clarence Faflik Shoes - North Olmstead, Ohio		7,737						
Douglas Shoes - Oxford, Ohio								
Clears Shoes - St. Marys, Ohio					31,989			
Carlyle's Shoes - Sandusky, Ohio			14,663					
The Shank Shoe Co. - Sidney, Ohio			15,631M					
Master S. S. - Struthers, Ohio								
Masters S. S. - Youngstown, Ohio					39,077			166,689M
Garrison's S. S. - Zanesville, Ohio								
Ship's Shoes - Ada, Okla.			14,347					
McClain's Shoes - Alva, Okla.		6,258		21,225				
Dutcher's S. S. - Altus, Okla.				20,184				
Hill Shoes - Ardmore, Okla.				27,893				
Petas S. S. - Bartlesville, Okla.								
Ritchie's S. S. - Blackwell, Okla.		9,588						
Pertina-Roberts Shoes - Chickasha, Okla.		8,619						
Bylie's S. S. - Cushing, Okla.								
Cochran's Shoes - Duncan, Okla.								
Fisher & Wassen Shoes - El Reno, Okla.			11,015M	20,009				
Earnest Bros. - Enid, Okla.							38,859	
Kennamer Shoes - Guthrie, Okla.		9,502						
Williams Shoeland - Henryetta, Okla.		6,551						
Boone's Shoes - Hobart, Okla.		5,132						
Nichols S. S. - Holdenville, Okla.		5,712						

	5,000 to	10,000 to	20,000 to	30,000 to	40,000 to	50,000 to	Over 100,000
Sherman's S. S. - Isabel, Okla.	4,947						
Decker's Buster Brown S. S. - Lawton, Okla.							
Fate's S. S. - McAlester, Okla.							
The Hub Bootery - Miami, Okla.							
Mason-Bardin S. S. - Midwest City, Okla.							
B & B Mill S. S. - Muskogee, Okla.							
L & H Shoes - Muskogee, Okla.							
Mill & Shippe S. S. - Norman, Okla.							
Mason-Bardin B.B.S.S. - Oklahoma City, Okla.							
Wylie's Shoes - Okmulgee, Okla.							
Faul's Shoes - Paula Valley, Okla.							
Kernest Bros. - Ponca City, Okla.							
Marriam's Clothiers - Sapulpa, Okla.							
Kernest Bros. - Shawnee, Okla.							
Kernest Bros. - Stillwater, Okla.							
Ray Allen Shoes - Tulsa, Okla.							
Com's Dept. Store - Tulsa, Okla.							
Reedy's S. S. - Vinita, Okla.							
Nichol's S. S. - Vinita, Okla.							
F & W Shoes - Woodward, Okla.							
Long's S. S. - Albany, Oregon							
Buster Brown Shoe Dept. - Ashland, Oregon							
(c/o Park View Dept. Store)							
Buster Brown S. S. - Astoria, Oregon							
Moore's B.B.S.S. - Bend, Oregon							
Vincent-Redmond Co. - Coos Bay, Oregon							
(DMA Buster Brown Shoe Store)							
Larson Dept. Store - Coquille, Oregon							
Gilmer's S. S. - Corvallis, Oregon							
Moore's S. S. - Cottage Grove, Oregon							
Nichols' Buster Brown S.S. - Eugene, Oregon							
Vincent-Redmond Co. - Grants Pass, Oregon							
Adams' Buster Brown S.S. - Grasham, Oregon							
Marlin's Shoes - Harviston, Oregon							
Eric Hargill S. S. - Hillsboro, Oregon							
Registry's Shoes - Klamath Falls, Oregon							
Bob's S. S. - Lebanon, Oregon							
Buster Brown S. S. - McMinnville, Oregon							
Vincent-Redmond Co. - Medford, Oregon							
(DMA Buster Brown Shoe Store)							
Nichols Buster Brown S. S. - Milwaukie, Oreg.							
Nichols Buster Brown S. S. - Oregon City, Oreg.							
Vanderburgh's S. S. - Oswego, Oreg.							

5,000 10,000 20,000 30,000 40,000 50,000  
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100,000

	0	5,000	10,000	20,000	30,000	40,000	50,000	over
	to	to	to	to	to	to	to	100,000
Buster Brown Shoe Dept. - Portland, Oreg.	5,000	10,000	20,000	30,000	40,000	50,000		372,476M
(Lipman Wolfe & Co.)								40 M
Spellman Bros. - Portland, Oreg.								40 M
(c/o Miller Mercantile Co.)								
Vandenburgh's S. S. - Portland, Oreg.		11,467						
Glenn's Shoes - Roseburg, Oreg.	5,022							
Don's S. S. - St. Johns, Oreg.								
Arbuckle's - Salem, Oreg.								
Buster Brown S. S. - The Bellies, Oreg.		10,493						
Shoe Box - Tillamook, Oreg.	4,244						49,162	
Jackson's S. S. - Maden, Penna.	6,107M							
Yeager's S. S. - Bellefonte, Penna.	6,088							
Bishop Shoe Co. - Bellefonte, Penna.								
Fagerstrom Shoes - Bradford, Penna.								
Lille S. S. - Carbondale, Penna.								
Betty's Shoes - Carlisle, Penna.								
Prover's S. S. - Chambersburg, Penna.								
Shugart's Shoes - Clearfield, Penna.	9,270							
Barbary's S. S. - Coatsville, Penna.	9,643M							
Jackson's S. S. - Coatsville, Penna.								
Boston S. S. - Dozers, Penna.								
Triche's Mill S. S. - Dornet, Penna.	9,386							
Sheslay's Mill S. S. - Franklin, Penna.	7,502M							
Gold's Shoes - Kutztown, Penna.	5,360							
Rob Shoe Co. - Kama, Penna.								
H. Gratton Quality Shoes - Lebanon, Penna.								
Boysenmichs Mill S. S. - Meadville, Penna.								
Mill Mill S. S. - Newcomen, Penna.								
Mill's Mill S. S. - Newcomen, Penna.								
James Folino - Mt. Lebanon, Penna.								
QMA Buster Brown Mt. Lebanon)								
Bishop Shoe Co. - Mt. Oliver, Penna.	5,900M							
Shugart's Shoes - Philipsburg, Penna.								
Steele's Buster Brown Shoes - Pittsburgh, Penna.	3 872							
Karl's S. S. - Pottsville, Penna.	8,805							
James Robles S. Den - Reading, Penna.								
(c/o Walter T. Jones Store)								
George's Shoes - Scrubbsburg, Penna.	6,000							
Triche's Mill S. S. - Tarentum, Penna.	8,232M							
Betty's Shoes - Wyncboro, Penna.								
Triche's Mill S. S. - Wilkesburg, Penna.								

98,177M

604,332M

35,361M

30,045

10,437

30,064M

Walborn Shoes - Anderson, So. Carolina	0	5,000	10,000	20,000	30,000	40,000	50,000	Over
	to	to	to	to	to	to	to	
	5,000	10,000	20,000	30,000	40,000	50,000	100,000	100,000
Joel's S. S. - Brookings, So. Dakota (DMA Joel's Shoes)	4,391		10,358		41,316			
Barber's Bootery - Morridge, So. Dakota		9,379						
Randelle - Rapid City, So. Dakota								
Egan's BBilt S. S. - Yankton, So. Dakota								
Smith's Shoes - Columbia, Tenn.			17,624					
Fowler's Shoes - Dyersburg, Tenn.			12,499					
Harrison's BBilt S. S. - Elizabethton, Tenn.			10,896					
Melms BBilt S. S. - Greenville, Tenn.			11,739					
Burnett's S. S. - Jackson, Tenn.				29,892	33,849			
J. W. Harrison Jr. - Johnson City, Tenn.				do				
Melms Shoe Dept. - Johnson City, Tenn. (c/o Boeser's)				26,314				
Harrison's Bootery - Kingsport, Tenn.				do				
Mettis Lee's Boy & Girl Shop - Kingsport, Tenn.								
Kirkpatrick BBilt S. S. - Lebanon, Tenn.			10,512					
Family S. S. - Lexington, Tenn.	3,943	9,013						
Wilson's BBilt S. S. - McMinnville, Tenn.								
Levey's Shoes - Memphis, Tenn.		3,208						
Rubenstein Footwear - Memphis, Tenn.								
Threadgill's S. S. - Milan, Tenn.				21,267				487,324M do M
E. L. Melms BBilt S. S. - Morristown, Tenn.			18,991					
Brown's Shoes - Morristown, Tenn.								
Burnett's S. S. - Paris, Tenn.		9,325						
Male's Shoes - Shelbyville, Tenn.			10,466					
Wells Bootery - Springfield, Tenn.		9,221						
Cleymon & Co. - Tullahoma, Tenn.			12,242					
Burnett's S. S. - Union City, Tenn.		8,837						
Morgan - Verhine - Union City, Tenn.		do						
Kanyon's Shoes - Amarillo, Texas								137,569M
Kanyon's Shoes No. 2 - Amarillo, Texas								do M
Buckley's S. S. - Borger, Texas				20,911				
Ellyn's Shoes - Brownsville, Texas (now Braden's Shoes)						48,040M		
Holliday & Anderson - Cleburne, Texas			15,381M					
Cooper-Spurlock Shoes - Corsicana, Texas				20,344				
Buster Brown Juvenile S. S. - Dallas, Texas								679,684M do M
Stones S. S. - Dallas, Texas								

	to 2,000	to 10,000	to 20,000	to 30,000	to 40,000	to 50,000	to 100,000	Over 100,000
Stone's S. S. - Denton, Texas								
Roger's S. S. - Ennis, Texas								
Foster's S. S. - Gilmer, Texas								
Cavayr S. S. - Graham, Texas		9,347M						
Stephenson's Shoes - Greenville, Texas	4,312	8,505	19,087			41,207M		
Ellyn's Shoes - Harlingen, Texas			11,999					
Rogers S. S. - Hunterville, Texas				23,377		40,050		
Adams S. S. - Killen, Texas								
Silver's S. S. - Longview, Texas								
Ellyn's Shoes - McAllen, Texas					32,728			
(now Doyle's Shoes)								
Wilson's S. S. - McKinney, Texas			13,763M					
Famous S. S. - Paris, Texas				20,977				587,718M
Chies's Shoes in Sunset Ridge - San Antonio, Texas								do M
Chies's Shoes - San Antonio, Texas								do M
(in North Town Plaza)								
Leary's Shoeland - San Antonio, Texas								
Coleman S. S. - Sherman, Texas								
Steele's Famous S. S. - Sulphur Springs, Texas		9,160						
Rogers S. S. - Temple, Texas				24,988				
Latimer's S. S. - Texarkana, Texas								
Olmstead S. S. - Tyler, Texas					30,419			
Coleman's Shoes - Vernon, Texas					30,218M			
Nash Shoe Co. - Wichita Falls, Texas			12,141				51,230M	
c/o Farley's on Ninth								101,724M
Randalls - Pecos, Utah								
Dragon's Shoe Store - Bennington, Vermont		8,023						
Mayman's S. S. - Alexandria, Virginia								
Alma Shop - Falls Church, Virginia			10,192				91,023	
McCollum-Farrell S. S. Martinsville, Virginia			18,798					
Kattman's S. S. - Auburn, Wash.			11,933M					
Spangler-Pancast Shoes - Bellingham, Wash.					34,688			
Spallman & Pease - Bremerton, Wash.				28,922				
(GSA Spallman's)								
Glen Freeman Shoes - Centralia, Wash.								
Boucher's S. S. - Colville, Wash.		8,584						
Hange's Buster Brown S. S. - Ellensburg, Wash.	3,806	8,625						





0	5,000	10,000	20,000	30,000	40,000	50,000	Over
to	to	to	to	to	to	to	100,000
5,000	10,000	20,000	30,000	40,000	50,000	100,000	

Graybull Shoes - Graybull, Wyoming  
 Kelley's Shoes - Worland, Wyoming

2,286  
 5,806

Total

Brown Franchise Stores in Metropolitan Areas 266 4 27 35 19 21 11 35 114

Brown Franchise Stores NOT in Metropolitan Areas 372 40 120 111 59 25 16 1 0

3 Accounts in areas where population is not available

Different Cities of Location  
Total  
 364

Franchise Store Cities as a %  
 of Total Cities by population  
 size groups

44 146 145 76 42 26 33 52

2.86%

.27% 10.53% 15.63% 22.85% 21.81% 25.00% 16.42% 40.00%

Number of Cities and Towns in each State  
(except Alaska and Hawaii)  
by Population Groups

Source: U. S. Census - 1960

State	0 to 5,000	5,000 to 10,000	10,000 to 20,000	20,000 to 30,000	30,000 to 40,000	40,000 to 50,000	50,000 to 100,000	Over 100,000	Total
Alabama	303	27	14	4	4	1	3	3	359
Arizona	55	9	5	2	1	0	0	2	74
Arkansas	395	19	9	5	0	1	2	1	432
California	302	70	76	41	24	12	28	15	548
Colorado	233	13	12	3	2	1	2	1	267
Connecticut	53	8	6	4	3	8	6	4	94
Delaware	44	3	1	0	0	0	1	0	51
Florida	336	46	25	8	8	2	4	4	435
Georgia	550	29	17	7	4	0	3	3	613
Idaho	190	7	7	2	2	0	0	0	208
Illinois	1,072	85	60	26	7	7	12	3	1,272
Indiana	482	37	23	4	5	5	3	6	565
Iowa	887	32	8	5	5	0	6	1	944
Kansas	572	17	19	4	2	1	0	3	618
Kentucky	356	22	15	1	3	1	2	1	399
Louisiana	236	27	17	4	1	2	2	1	292
Maine	69	12	7	3	1	1	1	0	94
Maryland	150	13	17	6	6	0	4	1	195
Massachusetts	102	14	20	18	8	8	15	5	190
Michigan	437	42	31	10	11	5	12	5	553
Minnesota	766	38	21	10	1	3	1	3	843
Mississippi	251	21	6	6	2	3	0	1	290
Missouri	850	44	19	9	3	0	4	2	931
Montana	117	5	4	3	0	0	2	0	131
Nebraska	514	13	7	2	0	0	0	2	536
Nevada	16	2	3	0	0	0	0	0	23
New Hampshire	40	5	6	2	1	0	1	0	55
New Jersey	198	79	64	26	14	7	11	6	405
New Mexico	62	10	4	4	2	0	0	1	85
New York	537	83	63	27	14	4	11	8	747
North Carolina	488	50	18	5	4	2	4	3	554
North Dakota	546	5	3	1	2	1	0	0	554
Ohio	761	80	67	10	13	5	10	8	954
Oklahoma	492	26	12	7	4	0	1	2	544

Number of Cities and Towns in each State  
(except Alaska and Hawaii)

Number of Cities and Towns in each State  
(except Alaska and Hawaii)  
by Population Groups

Source: U. S. Census - 1960

State	0 to 5,000		5,000 to 10,000		10,000 to 20,000		20,000 to 30,000		30,000 to 40,000		40,000 to 50,000		50,000 to 100,000		Over 100,000		Total
	0 to 5,000	5,000 to 10,000	10,000 to 20,000	20,000 to 30,000	30,000 to 40,000	40,000 to 50,000	50,000 to 100,000	Over 100,000									
Oregon	201	19	10	2	0	1	1	1	1	1	1	1	1	1	1	1	235
Pennsylvania	898	141	78	23	8	3	15	5	3	3	3	3	3	3	3	3	1,171
Rhode Island	9	2	4	1	0	0	0	0	0	0	0	0	0	0	0	0	23
South Carolina	266	27	7	3	0	2	3	0	2	2	3	3	3	3	3	3	308
South Dakota	296	4	5	1	0	1	1	0	1	1	1	1	1	1	1	1	308
Tennessee	251	24	19	7	1	0	0	0	0	0	0	0	0	0	0	0	306
Texas	708	81	51	17	8	5	10	11	5	5	10	10	11	11	11	11	891
Utah	191	15	6	0	1	0	1	1	0	0	1	1	1	1	1	1	215
Vermont	68	9	2	0	1	0	0	0	0	0	0	0	0	0	0	0	80
Virginia	217	17	15	3	1	1	4	5	1	1	4	4	5	5	5	5	263
Washington	246	20	14	4	2	2	0	3	2	2	0	0	3	3	3	3	291
West Virginia	230	14	7	4	0	1	3	0	1	1	3	3	0	0	0	0	259
Wisconsin	491	37	23	1	8	4	5	2	4	4	5	5	2	2	2	2	571
Wyoming	86	3	3	0	1	1	0	0	1	1	1	1	0	0	0	0	94
Total	16,422	1,386	928	337	188	104	201	130	19,696								

UNITED STATES OF AMERICA  
NATIONAL TRADE COMMISSION

In the Matter of  
BROWN SHOE COMPANY,  
a corporation.

Docket No. 7606

STIPULATION OF FACTS

Counsel supporting the complaint and counsel for respondent agree and stipulate that if the managers of the selling divisions of respondent were called as witnesses in this proceeding, they would testify as follows, and that this stipulation of facts and the documents appended hereto or incorporated herein by reference may be accepted by the Commission for the purpose of its determination and order herein as if such persons had so testified and in lieu of such testimony. This stipulation is made solely for the purpose of this proceeding, or any review thereof, and for no other action, case or proceeding.

(A) Franchise Store Programs

(1) International Shoe Company (hereafter called International) sells mens, womens and childrens shoes under a variety of brand names which compete directly with Brown brand shoes. International has a franchise stores program under the direction of its Merchants Service Division and the independent shoe retailers which operate on that program are known as Merchants Service stores.

In order to obtain the benefits and services available under the program, a Merchant Service dealer agrees to feature the shoes of a division of International, in each type of shoes (mens, womens and childrens) he carries, and at all times to handle such shoes in a representative manner.

The benefits and services given by International to the Merchants Service stores are fully described in a written agreement entitled Memorandum of Merchant's Service Plan Agreement. A copy of this agreement, identified as Appendix A, is attached to this stipulation and made a part hereof.

International advertises its Merchants Service program in Footwear News, a leading trade newspaper of the shoe industry. A number of full page advertisements, describing in detail the benefits and services offered or given to shoe retailers operating on the Merchants Service program, have been collected and placed in evidence as Respondent's Exhibit 8. These benefits and services set forth or described in said exhibit are included herein by reference and made a part of this stipulation.

(2) General Shoe Company (hereafter called General) sells mens, womens and childrens shoes under a variety of brand names which compete directly with Brown brand shoes. General has a franchise stores program under the direction of its Genesee Retailers Service Agency and the about 317 independent shoe retailers which operate on that program are known as Friendly Franchise stores.



In order to obtain the benefits and services available under the program, a Friendly Franchise dealer agrees to purchase sufficient quantities of footwear from General, in each type of shoes (mens, womens, childrens) he carries, as are necessary to assure the presence of an adequate and representative stock of merchandise in the Friendly Franchise store at all times.

The benefits and services given by General to the Friendly Franchise stores are fully described in a written agreement entitled "Friendly Franchise" Store Plan Contract. A copy of this agreement, identified as Appendix B, is attached to this stipulation and made a part hereof.

(B) Benefits and services available from other manufacturers

Although they do not have franchise store programs or use written contracts, some or all of the following benefits and services are offered and made available at no cost (or a nominal cost) by virtually all other manufacturers of branded shoes in competition with Brown Shoe Company to prospective or actual independent shoe retailer customers who will carry the branded shoes of such manufacturer or manufacturers in a representative manner and with adequate inventory:

- (1) Advertising mats, price tickets, window display materials, display fixtures, and other point-of-sale advertising and sales aids.
- (2) Outdoor and indoor signs for dealer and product identification (at cost or less than cost).

- (3) Semi-annual sale promotion kits.
- (4) Store opening promotional help including newspaper advertising, circulars, attendance prizes and the assistance of manufacturer sales representatives in stocking and selling shoes.
- (5) Business advice including advice on proper methods of merchandising and advertising.
- (6) Cooperative advertising allowance.

Included among the benefits and services not generally available but made available in selected instances by manufacturers of branded shoes in competition with Brown Shoe Company are the following:

- (1) Architectural services in connection with building a new shoe store or remodeling or refurnishing an existing shoe store.
- (2) Locations and leases. Helping dealers secure favorable locations. The guaranteeing of dealers' leases.
- (3) Credit terms more favorable than those generally given, such as larger discounts and extended dating.
- (4) Consignment of stock of shoes to dealer or agreement to buy back shoes unsold at the end of a season.
- (5) Special services to dealers in filling orders. This sometimes includes reduced or no charge for "fill-in" orders.

## APPENDIX A

MEMORANDUM OF  
MERCHANTS' SERVICE PLAN AGREEMENT

The International Shoe Company, through its Merchants' Service Department, agrees that it will make available to merchants who will operate their shoe business according to the Merchants' Service Plan, services listed below. Acceptance of this memorandum shall constitute a mutual agreement as per signators in space provided.

1. To give special service in filling orders for merchants operating under this Plan.
2. To provide periodic contact by retail supervisor to assist the merchant.
3. To provide an adequate system of accounting control.
4. To provide an adequate stock control and perpetual inventory system.
5. To provide a periodic stock book showing shoes in its stock so that mail orders can be placed intelligently.
6. To provide a complete, scientific stock analysis periodically.
7. To provide advice and counsel and periodic analyses of operations from the office of the department at St. Louis.
8. To extend special local co-operative advertising service in order to promote the operation of the merchant's store. (See reverse side.)
9. To provide a periodical promotional bulletin service featuring merchandising ideas, window display suggestions and other promotions to cooperate with the merchant in every practical and reasonable way to drive his retail establishment.
10. To provide assistance in the preparation of scaled designs for store fronts and store interiors.

## The Merchants' Service Plan requires of a merchant:

1. To feature the shoes of \_\_\_\_\_ Division of International Shoe Company, and at all times handle such shoes in a representative manner.
2. To give consideration to the purchase of special merchandise, offered by and supplied through the Merchandise Division of International Shoe Company.
3. To advertise the brand names of shoes distributed by the \_\_\_\_\_ Division of International Shoe Company on the exterior and in the interior of the premises as well as in store advertising and maintain the store so as to readily identify it as one in which such shoes can be purchased.
4. To render promptly, complete and accurate monthly reports of his business; also to maintain all Merchants' Service records as installed in his store.
5. To keep his stock and fixtures free from encumbrance and to keep them fully insured with a Company satisfactory to Merchants' Service Department.
6. To consult with the Merchants' Service Department before entering into any lease agreement or before incurring any liability that may impair his credit standing.
7. To take a physical inventory of stock twice annually, using Merchants' Service Form No. 738 for recording the detail.
8. To conform remodeling construction of store front and store interior with designs submitted by the Merchants' Service Department.
9. To furnish receipted bills and "tear sheets" of all advertising submitted for Advertising Allowance (See reverse side.)

(Firm Name)

By \_\_\_\_\_

Accepted: \_\_\_\_\_

Date: \_\_\_\_\_

INTERNATIONAL SHOE COMPANY

By \_\_\_\_\_

(over)

MEMORANDUM OF AGREEMENT AS TO ADVERTISING ALLOWANCE  
TO CUSTOMERS OPERATING UNDER THE MERCHANTS' SERVICE PLAN OF  
INTERNATIONAL SHOE COMPANY

When accepted in the space provided below, this memorandum shall constitute the agreement for advertising allowance to be made to the signator merchant as one of the accounts operating satisfactorily under the Merchants' Service Plan.

- a) Advertising expenditures, to qualify, must be as per the approved media items. Mention of the trade-mark or brand name must be featured in all copy.
- b) The approved and qualifying investment in retail advertising must be substantiated by proof of performance (newspaper tear-sheet, sample of direct mail piece, copy or continuity for radio and television time charges), the paid invoice for same and the completely filled-in 101A form report, filed on a monthly basis.
- c) Allowance will be an amount equal to one-half of the advertising investments but not over 2% of the total net purchases of leather footwear from the sponsoring division.
- d) The net shipments upon which our allowance for advertising shall be computed shall be calculated from December 1 to November 30 of the following year. If this agreement is terminated for any reason within any such period no advertising allowance shall be due for the period of from December 1 prior to termination date and date of determination shall be the customary advertising allowance to merchants not operating according to the Merchants' Service Plan.
- e) The net shipments to you, your expenditure for advertising and our allowance thereon shall be computed and remittance mailed to you as soon after November 30 each year as may be practicable.
- f) No earned advertising allowance will be made unless the net leather shipments for the period amount in the aggregate to \$15,000 or more from sponsoring division.

\_\_\_\_\_  
(Firm Name)

By \_\_\_\_\_

INTERNATIONAL SHOE COMPANY

By \_\_\_\_\_

Accepted: \_\_\_\_\_

Date: \_\_\_\_\_

(over)

**"FRIENDLY FRANCHISE" STORE PLAN CONTRACT****APPENDIX B**

This Agreement is made on this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, by and between the General Shoe Corporation, a Tennessee Corporation, with principal offices located at 119 Seventh Avenue, North, Nashville, Tennessee, hereinafter called the "First Party" and \_\_\_\_\_ of \_\_\_\_\_ hereinafter called the "Second Party,"

**WITNESSETH:**

Whereas, First Party has organized and developed a special service plan known as "The Friendly Franchise Store Plan" for use by merchants, who are able to qualify, in operating retail shoe stores and

Whereas, Second Party has met the qualifications set up by First Party and is desirous of operating under said Plan.

Now THEREFORE, IN CONSIDERATION OF THE PREMISES, and the mutual covenants and agreements hereinafter set out, the Parties agree as follows:

**First Party Agrees:**

- 1: To qualify Second Party for the volume discount available on any lines manufactured by First Party, provided such lines are carried in the store of Second Party.
- 2: To qualify Second Party for the cooperative advertising plans available on any lines manufactured by First Party, provided such lines are carried in the store of the Second Party.
- 3: To afford Second Party expeditious handling and servicing of orders, with a guaranteed minimum of postage to be delivered in case of national emergency.
- 4: To provide Second Party with a simplified system of perpetual inventory and stock control.
- 5: To provide Second Party with services of a Retail Sales Analysis department, and periodic Sales analysis advice.
- 6: To provide Second Party with the volume discount available through the resources of First Party in the purchase of store fixtures, furniture and window display fixtures.
- 7: To provide Second Party with architectural advice in the planning of new store facades and interiors.
- 8: To provide Second Party with special service through its advertising departments in the planning of store openings and special promotions.
- 9: To provide Second Party with the counsel of any executive departments of First Party for advice on the improvement and development of his store(s) or department(s).
- 10: That Second Party is granted the right to use, should he so desire, its trademark "Friendly" as the name for its retail store located at \_\_\_\_\_ as long as Second Party is operating the store under said plan.
- 11: To qualify Second Party for the cooperative advertising plans available on the trademark "Friendly", provided such trademark is used by the Second Party in its advertising program.

**Second Party Agrees:**

- 1: To purchase sufficient quantities of footwear from First Party as are necessary to assure the presence of an adequate and representative stock of merchandise in the store of Second Party at all times during the operation of this Store Plan Contract.
- 2: To furnish monthly reports of his business, and to maintain such sales control and sales analysis forms as required under this Plan.
- 3: To keep his stock and fixtures fully insured, against the perils of fire, sprinkler leakage and the other hazards generally covered by the extended coverage endorsement.
- 4: To cooperate with the First Party in advertising nationally advertised merchandise, and to consider the recommendation of the First Party in respect to the contents and frequency of any contemplated advertising. To coordinate advertising and special promotions with First Party.
- 5: To submit invoices for cooperative advertising allowance at whatever discount rate retailer may have with his local newspaper, and to submit duplicate invoices and tear sheets of advertising under the separate rules of cooperative advertising plans in effect with the various divisions of First Party.
- 6: To keep his merchandise, furniture and fixtures, and improvements and betterments free at all times from liens, chattel mortgages or any other type of encumbrances unless First Party grants written permission for such.
- 7: To discontinue immediately the use of the tradename "Friendly" should Second Party cease to operate under this Plan.

It is mutually agreed that this Plan shall continue in effect as long as each Party shall perform the covenants and agreements hereinbefore set out.

IN WITNESS WHEREOF, The parties have executed this AGREEMENT on this, \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_

**GENERAL SHOE CORPORATION**

By \_\_\_\_\_

Fifth DAY

By \_\_\_\_\_

Docket No. 7606  
FEDERAL TRADE COMMISSION  
VS.  
BROWN SHOE COMPANY

Advertisements of the Merchants Service Division of International Shoe Company Appearing in Footwear News (1959-1961)

Exhibit	Identifying Caption	Date
A	Do You Have The Golden Key To Growth?	June 12, 1959
B	Do Your Plans Include A Profit?	June 19, 1959
C	Do You Want Help With Advertising?	July 3, 1959
D	Would I Have Made More Money With ISCO's Merchant Service?	January 8, 1960
E	Can I Get More From ISCO's Merchant Service?	January 12, 1960
F	How To Choose A Successful Retail Shoe Store Location	February 19, 1960
G	How To Control Inventory For Better Turnover	February 26, 1960
H	How To Assure Yourself Personalized Attention On All Orders	March 4, 1960
I	How To Get Help With Your Problems From Experienced Retail Advisors	March 18, 1960
J	How An Independent Shoe Retailer Can Know More And Guess Less	April 1, 1960
K	How To Make Surer Profits Through Planned Budget Control	May 27, 1960
L	How To Sell More Shoes With Hard Working Advertising And Display	June 24, 1960
M	How You Can Double Your Advertising At No Added Cost	July 1, 1960
N	You Can Make More From A Store Planned And Designed By Experts	August 19, 1960
O	How You Can Keep Up With Profitable Trends And Compare Your Own Performance	September 2, 1960

[fol. 321E(2)] RESPONDENT'S EXHIBIT 8Z

Advertisements of the Merchants Service Division of International Shoe Company Appearing in Footwear News (1959-1961)

Exhibit	Identifying Caption	Date
P	How You Can Profit From The Industry's Biggest Idea Exchange	December 9, 1960
Q	Helpful Hands To Control Your Stock For Better Turnover	January 20, 1961
R	Helpful Hands To Prepare Your Ads For Better Promotion	February 3, 1961
S	Helpful Hands To Keep You In Touch With Industry Trends	June 2, 1961
T	Helpful Hands To Improve Your Control With Simplified Accounting	June 9, 1961
U	Helpful Hands To Bring You Expert Financial Counseling	June 23, 1961
V	Helpful Hands That Guide You To Successful Retail Store Locations	July 20, 1961
W	Helpful Hands To Give You Expert Store Planning And Design Service	August 3, 1961
X	Helpful Hands That Solve Store Problems With Personal Counseling Service	September 7, 1961

[fol

To HUT  
Kindly  
Custom

Sold

Terms

High

Owes

Ami.

Acct.



To HUTH JAMES SHOE, INC. MILWAUKEE, WISC.  
1039 S. SECOND ST.  
 Kindly give us below YOUR EXPERIENCE with

Customer No. \_\_\_\_\_ P.O. POINT PLEASANT, W. VA.

Yours Truly,

*Brown Shoe Company*

MEMBER NATIONAL ASSOCIATION OF CREDIT MEN

Sold _____ To _____	<input type="checkbox"/>	Discounts
Terms _____	<input type="checkbox"/>	Prompt
High Credit \$ _____	<input type="checkbox"/>	Slow but considered good
Owes \$ _____	<input type="checkbox"/>	Slow and unsatisfactory
Amt. Due \$ _____	<input type="checkbox"/>	Days slow
Acct. Secured? \$ _____	<input type="checkbox"/>	Makes unjust claims
	<input type="checkbox"/>	Returns goods unjustly
	<input type="checkbox"/>	Acct. collected by attorney
	<input type="checkbox"/>	Acct. in attorney's hands

THIS SIDE OF CARD IS FOR ADDRESS



HUTH JAMES SHOE, INC.  
 1039 S. SECOND ST.  
 MILWAUKEE, WISC.

[fol. 323E] 882

80700 N100 1M-1 11-60

St. Louis, OCT 23 1961

OUR EXPERIENCE  
RETAIN THIS FOR YOUR FILES

Name of Customer THE SHOE CENTER No. \_\_\_\_\_

City & State 510 MAIN ST. POINT PLEASANT, W. VA.

Sold april To 10-17-61

Terms 2% or 5% 30 days

Owes \$ 203-

Amount Due \$ \_\_\_\_\_

Amount Secured \_\_\_\_\_

☒ Discounts  
\_\_\_\_\_  
Prompt  
\_\_\_\_\_  
Slow  
\_\_\_\_\_  
Days Slow

*Brown Shoe Company*

THIS SIDE OF CARD IS FOR ADDRESS



*Brown Shoe Company*

8300 MARYLAND AVENUE

ST. LOUIS 5, MISSOURI

CREDIT AND SALES EXPERIENCE OF SIX MANUFACTURERS WITH  
BROWN FRANCHISE STORES AFTER SEPARATION FROM  
FRANCHISE PROGRAM, OCTOBER 31, 1949 - APRIL 1, 1958.

RESPONDENT'S EXHIBIT 10A-E

CODE

DNS	-	do not sell or no account on current ledger
NE	-	no experience or never sold or no record of sales
NRE	-	no recent experience
1st	-	first sale
Mos.	-	sold for less than 1 year to date
Yrs.	-	sold for years to date

Where actual month/year is listed, account has  
apparently been sold from that time to the  
present unless shown otherwise.

Where space is left blank, no information for  
that particular dealer was received from the company  
in response to the request from respondent's credit  
department.

No requests for information were made for stores  
that have been sold or gone out of business since  
leaving the Brown Franchise Program.

CREDIT AND SALES EXPERIENCE OF SIX MANUFACTURERS WITH  
BROWN FRANCHISE STORES AFTER SEPARATION FROM  
FRANCHISE PROGRAM, OCTOBER 31, 1949 - APRIL 1, 1958.

Store Name	Location	Date Separated	Juvenile	Deb	Freeman	Weyenberg	Huth-James	Leverenz
Feinbergs	Opelika, Alabama	3/11/54	Yrs.	1954	DNS	1951	NE	NE
Imans	Arkadelphia, Ark.	10/21/55	NRE	NE	DNS	NE	NE	NE
Heinemann's	Jonesboro, Arkansas	5/13/54		NE	DNS	DNS	NE	NE
Ken Morris Shoe Store	Mountain Home, Ark.	6/21/56			DNS	DNS	NE	NE
Piella Shoes	Burbank, California	6/22/54	Yrs.	NRE	DNS	NE	NE	NE
Jan Lee Shoe Corp.	Compton, California	10/15/57	NRE	NE	DNS	DNS	NE	NE
LaTijera Bootery	Los Angeles, Calif.	2/6/58	NRE	NE	DNS	1956	NE	NE
Richards Shoes	Norwalk, California	11/5/57	Yrs.	NE	DNS	NE	NE	NE
Southwick's Shoe Store	Petaluma, California	1/18/56	Yrs.	NE	DNS	NE	NE	NE
Victor's Shoes	Redwood City, Calif.	1/26/53	NE	NRE	DNS	DNS	NE	NE
Laurel Shoes	San Carlos, Calif. San Mateo	6/6/55	Yrs.	NE	DNS	DNS	NE	NE
The Shoe Box	Thomasville, Ga.	6/19/52	NRE	NE	DNS	DNS	NE	NE
Ralphs Shoe Store	Buhl, Idaho	8/22/57	NE	NRE	DNS	DNS	NE	NE
McCoy's Shoe Store	Jacksonville, Ill.	10/6/53	NRE	NE	DNS	DNS	NE	NE
Seymours Shoes	Evansville, Ind.	2/6/58	NRE	NE	DNS	1957	NE	2 years
O'Connor's Shoe Store	Emmetsburg, Iowa	6/21/57	NRE	NE	DNS	DNS	NE	*

\*Leverenz--account collected by attorney.

\*Leverenz--account collected by attorney.

Store Name	Location	Date Separated	Juvenile	Deb	Freeman	Weyenberg	Ruth-James	Leverenz
J & P Shoe Store	Independence, Iowa	10-9-54	NRE	NE	Yrs.	1947	NE	Yrs.
Gordon's Shoes	Lake City, Iowa	12-9-57	NRE	NE	Yrs.	DNS	NE	NE
Eddy's Shoe Store	Perry, Iowa	7-1-57	Yrs.	NE	Yrs.	DNS	NE	NE
Fitch's Shoe Store	Pochontas, Iowa	9-12-55	NRE	NE	Yrs.	DNS	NE	2 Yrs.
Weier B. B. Shoe Store	Abeline, Kansas	6-29-54	NRE		DNS	DNS	NE	NE
Farley Shoe Store	Beloit, Kansas	10-21-56	NRE	NE	DNS	DNS	NE	NE
Overman's Shoe Store	Colby, Kansas	3-12-57	NRE	NE	11-60	DNS	NE	NE
Revell and McCall	Emporia, Kansas	6-6-55	NRE	NRE	3/59	DNS	NE	NE
McCrun and Maupin Shoes	Fort Scott, Kansas	1-22-53	NRE	NRE	Yrs.	DNS	NE	NE
Purdy's Shoe Store, Inc.	Oenabore, Ky.	5-26-54	NRE	NRE	DNS	1949	NE	NE
Chaumont Shoe Store	Dunice, Louisiana	8-21-52	NRE	NE	DNS	DNS	NE	NE
Larson's Shoe Store	Alma, Michigan	12-13-57	NRE	NE	DNS	DNS	NE	*1st
Colberts Shoes	Kankato, Minn.	2-8-55	NRE	NE	2/59	DNS	NE	NE
Arnold Elquist Shoes	2707 E. Lake	5-26-59	NE	NE	DNS	DNS	NE	10/59
Carl Elquist Shoes	1541 E. Lake	5-26-54	NE	NE	DNS	DNS	NE	NE
Elquist Shoe Store (Elquist stores--all Minneapolis, Minn.)	6615 Lyndale Ave., So.	5-26-54	NE	NE	DNS	DNS	NE	NE
Start Shoe Store	Canton, Miss	2-18-52	Yrs.	6/48	DNS	*1949 to 1-27-60	NE	NE

\*Leverenz--credit information given on 12-29-60

\*\*Weyenberg--credit information given on 1-23-61

[fol. 327E]

## Respondent's Exhibit 10-D.

Store Name	Location	Date Separated	Juvenile	Deb	Freeman	Weyenberg	Huth-James	Leverenz
Poole's Shoe Store	Columbia, Miss.	6/10/56	7 Mos.	NRE	DNS	DNS	NE	NE
Toxey's Shoes, Inc.	Hattiesburg, Miss.	6/29/54	Yrs.	NRE	DNS	DNS	NE	NE
Rowland Shoe Store	Carrollton, Mo.	2/16/56	NRE	NE	DNS	DNS	NE	DNS
Buster Brown Shoes Otto Colman	Cedarhurst, N.Y.	12/13/56	NRE	NE	DNS	DNS	NE	NE
Altier & Sons Shoes	Rochester, N.Y.	12/2/53	Yrs.	NE	Yrs.	DNS	NE	NE
Carl's Shoes	Caldwell, Ohio	12/29/54	NRE	NE	DNS	NE	NE	NRE
Evans & Schwartz, Inc.	Columbus, Ohio	1/17/56	NRE	NE	Yrs.	1930	NE	Yrs.
Bennetts Shoe Co.	Gallion, Ohio	7/26/54	Yrs.	NE	DNS	1956	NE	NRE
Norton's, Inc.	Piqua, Ohio	6/13/56	Yrs.	NRE	DNS	DNS	NE	NE
Gimre's Shoe Store	Forest Grove, Ore.	6/17/55	NRE	NE	DNS	Yrs.	NE	*1st
King's	Pendleton, Oregon	1/23/51	NRE	NE	DNS	NE	NE	NE
Keydricks Shoes	Huntingdon, Pa.	3/12/58	Yrs.	NRE	DNS	DNS	NE	NE
Wise Shoe Store	McKees Rocks, Pa.	8/6/51	NRE	NRE	DNS	DNS	NE	NE
Wachters Shoe Store	Memphis, Tenn.	/29/58	NRE	NE	DNS	DNS	NE	NE
Sauddy's Shoe Store	Beaumont, Texas Port Arthur, Texas Port Arthur, Texas	7/25/55	NE	NRE	DNS	DNS	NE	NE
Mahrenbergers B/ Milt Shoe Dept.	Conroe, Texas	6/29/54	NE	NE	DNS	DNS	NE	NE

\*Leverenz--credit information given on 1/23/61.

Store Name	Location	Date Separated	Juvenile	Deb	Freeman	Weyenberg Huth-James Leverniz
Preston's Shoes	Dennison, Texas	6/21/51	NRE	NRE	DNS	NE
Edwards Shoe, Inc. d/b/a Webbs Famous Shoe Store	Marshall, Texas	7/26/54	NRE	NE	DNS	NE
Marchman's Dept. Store	Waxahachie, Texas	1/17/52	NRE	NE	DNS	NE
Shoe Center, Inc.	Point Pleasant, W.V.	7/30/56	NRE	NE	DNS	NE
McDonald B/Bilt Shoe Store	Ashland, Wisc.	8/11/53	NRE	NE	DNS	NE
Colbert's Shoes	Chippewa Falls, Wisc.	2/8/55	Yrs.	NE	DNS	NRE
Colbert's Shoes	Marshfield, Wisc.	2/8/55	Yrs.	NE	DNS	NRE



F. T. C. vs. BROWN SHOE COMPANY, DOCKET NO. 7606

OUTSIDE LINE SURVEY OF BROWN FRANCHISE DEALERS

Vol. 1--Alabama Through Illinois

Vol. 2--Indiana Through New York

Vol. 3--North Carolina Through Wyoming

## OUTSIDE LINE SURVEY OF BROWN FRANCHISE DEALERS

I. EXPLANATION OF SURVEY

By letter form dated November 30, 1960, respondent sent a request to the 721 independent shoe retailers then operating on the Brown Franchise Program (now known as the Independent Retailers Program) to "List all the brands of shoes, including rubber and canvas, carried in your store," and return the information on the form provided to respondent.

The number of survey sheets returned by the dealers in response to the request was 573, which amounts to 79.5 per cent of all franchise dealers answering.

The survey sheets were analyzed by J. R. Johnston, Manager of the Brown Franchise Division, for the names of lines conflicting with Brown brand lines, and where present these were noted on each report sheet. A list of the conflicting lines found and the manufacturers thereof, is set forth in Part IV of this exhibit.

The survey sheets were also analyzed to obtain a list of franchise dealers who carry the shoe lines of Deb Shoe Company, Freeman Shoe Corporation, Huth-Hames Shoe Company, Juvenile Shoe Corporation, Leverenz Shoe Company or Weyenberg Shoe Manufacturing Company. A summary of this information is given in Part II hereof, and a complete list of these franchise dealers is given in Part III.

The individual survey sheets have been bound together, numbered, and are to be introduced as Respondent's Exhibit \_\_\_\_.

## II. RESULTS OF SURVEY

### A. Conflicting Lines

Number of Brown Franchise Stores reporting, carrying one or more lines of shoes conflicting with Brown brand lines	501
Number of Brown Franchise Stores reporting	573
Per cent of Brown Franchise Stores reporting, carrying one or more conflicting lines of shoes	87.4%

### B. Brown Franchise Stores Carrying Shoe Lines of Certain Named Manufacturers.

1. Number of Brown Franchise Stores reporting, carrying the shoe lines of the following manufacturers (of 573 total stores reporting).

(a) Deb Shoe Company	15
(b) Freeman Shoe Corporation	24
(c) Huth-James Shoe Company	3
(d) Juvenile Shoe Corporation	68
(e) Leverenz Shoe Company	3
(f) Weyenberg Shoe Manufacturing Co.	34

## III. LIST OF BROWN FRANCHISE DEALERS (OF 573 REPORTING) WHO CARRY THE SHOE LINES OF DEB SHOE COMPANY, FREEMAN SHOE CORPORATION, HUTH-JAMES SHOE COMPANY, JUVENILE SHOE CORPORATION, LEVERENZ SHOE COMPANY OR WEYENBERG SHOE MANUFACTURING COMPANY.

### A. Deb Shoe Company

1. Sebastians Shoes - Santa Ana, California
2. Farner's Shoe Store - Tampa, Florida
3. Hudson's - Burley, Idaho

4. Hudson's Shoe Store - Pocatello, Idaho
5. Hudson's (2 locations) - Twin Falls, Idaho
6. McClain's Shoes - Alva, Oklahoma
7. Boone's Shoes - Hobart, Oklahoma
8. Welborn Shoes, Inc. - Anderson, South Carolina
9. Fowler's Shoes - Dyersburg, Tennessee
10. Harrison Shoe Store - Elizabethtown, Tennessee
11. Harrison's Bootery - Kingsport, Tennessee
12. Buckley's Shoe Store - Berger, Texas
13. Hereford Shoe Store - Hereford, Texas
14. David's Shoes - Kennewick, Washington
15. David's Shoes - Richland, Washington

(Note: Deb, Debs, or Demosette were the only brands listed.)

B. Freeman Shoe Corporation

1. Peters Shoe Store - Glendale, California
2. Knight and Hendley, Inc. - St. Petersburg, Florida
3. Mason's - Douglas, Georgia
4. Reuben's Shoes - Fitzgerald, Georgia
5. McCoys Midwest Shoes, Inc. - Centralia, Illinois
6. Leo Noble Shoe Store - DeKalb, Illinois
7. Musgrove Shoe Store - Olney, Illinois
8. Tim & Jerry's - Grand Haven, Michigan
9. Ron's Booterie - Hastings, Nebraska
10. Colby's Shoes - West Orange, New Jersey
11. Carbone's Shoes - Gouverneur, New York
12. G. Bareis and Son - Rochester, New York
13. Elkind Bros. & Ames Shoes - Syracuse, New York
14. Master's Shoe Store, Inc. - Youngstown, Ohio
15. Dutcher's - Altus, Oklahoma
16. Dutcher's - Lawton, Oklahoma
17. Hub Bootery - Miami, Oklahoma
18. Paul's Shoes - Pauls Valley, Oklahoma
19. Holliday Anderson Shoe Store - Cleburne, Texas
20. Bob's Shoe Store - Lebanon, Oregon
21. Vandenburg's Shoe Store - Portland, Oregon

(Note: Freeman was the only brand listed.)

C. Huth-James Shoe Company

1. Cassidy's Shoe Store - Hanford, California
2. Powelson Shoe Store - Moline, Illinois
3. David's Shoes - Ottawa, Illinois

(Note: Huth-James was the only brand listed.)

**D. Juvenile Shoe Company**

**Brand**

- |   |                        |
|---|------------------------|
| 1. DeShields-Larson (3 locations) - Montgomery, Ala.          | (Clinic and Lazy Bones |
| 2. Harris Shoes, Inc. - Benton, Arkansas                      | Clinic                 |
| 3. Monday-Fowell Shoe Store - Conway, Arkansas                | Clinic                 |
| 4. Joseph Footwear - Jonesboro, Arkansas                      | Clinic                 |
| 5. Hall & Monday Shoe Store - Newport, Arkansas               | Juvenile Shoe          |
| 6. Grande's Shoes - Alameda, California                       | Clinic                 |
| 7. Richard's Shoes - Bell, California                         | Clinic                 |
| 8. Cassidy's Shoe Store - Hanford, California                 | Clinic                 |
| 9. Bodell's Shoes - Long Beach, California                    | Clinic                 |
| 10. Fuhrman's Lynwood Bootery - Lynwood, California           | Clinic and Lazy Bones  |
| 11. Grande's Shoes - Martinez, California                     | Juvenile Shoe          |
| 12. Shively's - Merced, California                            | Clinic                 |
| 13. Sandler's Shoe Store - Montebello, California             | Clinic                 |
| 14. Cassidy's Shoes - Porterville, California                 | Juvenile Shoe          |
| 15. Carl's Shoes - Red Bluff, California                      | Clinic                 |
| 16. Green and Heyden Co. - Sacramento, California             | Clinic                 |
| 17. Matchett's B/Bilt - Santa Monica, California              | Clinic and Lazy Bones  |
| 18. Smith's Shoe Store (2 locations) - Santa Rosa, California | Clinic and Lazy Bones  |
| 19. Cassidy's Shoe Store - Tulare, California                 | Clinic                 |
| 20. Smith's Shoe Store #3 - Ukiah, California                 | Juvenile Shoe          |
| 21. Lee's Shoes - W. Covina, California                       | Clinic                 |
| 22. Burton's Shoe Store - Woodland, California                | Clinic                 |
| 23. S. Schatzman & Balk's Dept. Store - Coral Gables, Florida | Lazy Bones             |
| 24. S. Schatzman & Balk's Dept. Store - Miami, Fla.           | Lazy Bones             |
| 25. Farner's Shoe Store - Tampa, Florida                      | Clinic                 |
| 26. Hudson's - Burley, Idaho                                  | Clinic                 |
| 27. Smith's Smart Shoes - Lansing, Illinois                   | Lazy Bones             |
| 28. Fred Smith Shoes - Mattoon, Illinois                      | Clinic                 |
| 29. David's Shoes - Ottawa, Illinois                          | Clinic                 |
| 30. McCoy's Shoe Store - Paris, Illinois                      | Clinic                 |
| 31. McCoy's Shoe Store - Robinson, Illinois                   | Clinic                 |
| 32. Doug's Shoes, Inc. - Salem, Illinois                      | Clinic                 |
| 33. Kaye's Shoe Store - Fort Wayne, Indiana                   | Clinic and Lazy Bones  |
| 34. Stein's Shoe Store - New Albany, Indiana                  | Clinic                 |
| 35. Taylor's Shoe Store - Rochester, Indiana                  | Clinic                 |
| 36. Schoelch's Hub Shoes, Inc. - Shelbyville, Ind.            | Clinic and Lazy Bones  |
| 37. Eitman Shoe Store - Ft. Madison, Iowa                     | Lazy Bones             |
| 38. Bob's Shoes - Oelwein, Iowa                               | Clinic                 |
| 39. Froelich's Shoes - Junction City, Kansas                  | Clinic                 |
| 40. Bacon Shoe Store - Leavenworth, Kansas                    | Clinic                 |
| 41. B & H Shoes - Somerset, Kentucky                          | Clinic                 |
| 42. Fisher's Shoes - Plymouth, Michigan                       | Clinic                 |
| 43. Junior Boot Shop - Springfield, Missouri                  | Lazy Bones             |

Juvenile Shoe Company (Continued)Brand

44. Lloyd's Shoes - Omaha, Nebraska	Juvenile Shoe
45. Colby Shoes - West Orange, New Jersey	Clinic
46. Vin-San Shoes - Westwood, New Jersey	Clinic
47. Lesters Shoes - Roswell, New Mexico	Clinic
48. Hub Bootery - Bronx, New York	Clinic
49. Carbone's Shoes - Gouverneur, New York	Clinic
50. Milton Shoes - Berea, Ohio	Clinic
51. Clarence Faflik Shoes #3 - Parma, Ohio	Juvenile Shoe
52. Abbott's Shoe Store - Wapakoneta, Ohio	Clinic and Lazy Bones
53. Hub Bootery - Miami, Oklahoma	Clinic
54. Moore's Shoe Store - Ben, Oregon	Juvenile Shoe
55. Lilje's Shoe Store - Carbondale, Pennsylvania	Clinic
56. Heydrick Shugarts, Inc. - Clearfield, Pennsylvania	Juvenile Shoe
57. Hershey's Shoe Store - Coatesville, Pennsylvania	Clinic
58. Shugarts Shoes - Philipsburg, Pennsylvania	Juvenile Shoe
59. Hogan's BB Store - Yankton, South Dakota	Clinic
60. Clayton and Co. - Tullahoma, Tennessee	Clinic and Lazy Bones
61. Burnetts Shoe Store - Union City, Tennessee	Juvenile Shoe
62. Adams Shoe Store - Killeen, Texas	Clinic
63. Chism's Shoes, Inc. - San Antonio, Texas	Juvenile Shoe
64. The Beaver Bootery - Beaver Dam, Wisconsin	Clinic and Lazy Bones
65. McCoy's Shoes - Beloit, Wisconsin	Clinic
66. Moes Shoes - Black River Falls, Wisconsin	Lazy Bones
67. Lindman's - Milwaukee, Wisconsin	Clinic and Lazy Bones
68. Kerr's Shoes - Monroe, Wisconsin	Clinic and Lazy Bones

E. Leverenz Shoe CompanyBrand

- |   |          |
|---|----------|
| 1. Schmanke's Shoe Store - Rochester, New York    | Leverenz |
| 2. Milton Shoes - Berea, Ohio                     | Leverenz |
| 3. Juels Shoe Store, Inc. - Brookings, So. Dakota | Calumet  |

F. Weyenberg Shoe Manufacturing CompanyBrand

- |  |                |
|--|----------------|
| 1. Johnson's Shoes - Orland, California          | Weyenberg Shoe |
| 2. Johnson's Family Shoe Store - Willows, Calif. | Weyenberg Shoe |
| 3. Howards Shoe Store - Hillsboro, Illinois      | Portage        |
| 4. Schultz Bros. Shoes - Madison, Indiana        | Massagic       |
| 5. Stein's Shoe Store - New Albany, Indiana      | Portage Shoe   |

Weyenberg Shoe Manufacturing Company (continued)Brand

6.	Schoelch's Hub Shoes, Inc. - Shelbyville, Ind.	Massagic
7.	Strand's Shoes - Grinnell, Iowa	Weyenberg
8.	Blinkinsop Shoe Store - Marengo, Iowa	Weyenberg
9.	Bob's Shoes - Celwein, Iowa	Weyenberg
10.	Goulds Shoes - Berkley, Michigan	Weyenberg
11.	Sherman Shoes - Detroit, Michigan	Monarch-Youngste
12.	Frisholm's Bootery - Montevideo, Minnesota	Weyenberg
13.	Niederman's Inc. - New Brunswick, New Jersey	Massagic
14.	Fresh Meadows, Inc. - Long Island, New York	Massagic
15.	Fogarty's Shoe Store - Newburg, New York	Massagic
16.	G. Bareis and Son - Rochester, New York	Weyenberg
17.	Clarence Faflik Shoes #2 - Maple Heights, Ohio	Massagic
18.	Abbott's Shoe Store - Wapakoneta, Ohio	Massagic
19.	Perkins-Roberts - Chickasha, Oklahoma	Portage
20.	Fisher and Nissen Shoes - El Reno, Oklahoma	Weyenberg
21.	Buster Brown Shoe Store - Astoria, Oregon	Portage - Weyenberg
22.	Millers Hollywood - Portland, Oregon	Weyenberg
23.	Vandenburgh's Shoe Store - Portland, Oregon	Weyenberg
24.	Jackson's Shoe Store - Aliquippa, Pennsylvania	Weyenberg
25.	Jackson's Shoe Store - Baden, Pennsylvania	Massagic
26.	Bishop Shoe Co. - Bellevue, Pennsylvania	Massagic
27.	Jackson's Shoe Store - Coraopolis, Pennsylvania	Weyenberg
28.	M. Bratton - Lebanon, Pennsylvania	Massagic
29.	Blynn's Shoe Store - Pittsburgh, Pennsylvania	Weyenberg
30.	Bishop Shoe Co. - Mt. Oliver, Pennsylvania	Weyenberg and Massagic
31.	Karen's Shoe Store - Turtle Creek, Pennsylvania	Weyenberg
32.	Cooper-Terry - Ft. Worth, Texas	Portage
33.	Beaver Bootery - Beaver Dam, Wisconsin	Weyenberg
34.	Third Ave. Shoe Shop - Sturgeon Bay, Wisconsin	Weyenberg



IV. LIST OF CONFLICTING LINES BY BRAND AND  
MANUFACTURER REPORTED ON OUTSIDE LINE  
SURVEY OF BROWN FRANCHISE DEALERS.

<u>Conflicting Line</u>	<u>Manufacturer</u>
Air Tred	Air Tred Shoes, Inc.
Alexis	Weber Shoe Company
American Girl	American Girl Shoe Company
American Juniors	Consolidated National Shoe Corp.
Bates	Bates Shoe Company
Black Hawk	Ideal Shoe Company
Blue Bonnet	Blue Star Shoes, Inc.
Buffalo Billys	Chesapeake Shoe Manufacturing Co.
Buntees	Potvin Shoe Co.
Buskins	Buskins, Inc.
California Cobblers	Cobblers, Inc.
Calumet	Leverenz Shoe Company
Capezio	Capezio, Inc.
Carpenter's Self Starters	Carpenter Shoe Company
Carter	J. W. Carter
Child Life	Herbst Shoe Company
Citations	Somersworth Manufacturing Co.
City Club Retrievers	International Shoe Company
Clara Barton	Clara Barton Shoe Company
Classmates	Ideal Shoe Company
Clinics	Juvenile Shoe Corporation
Cobblers	Cobblers, Inc.

Conflicting Line

Conntie  
Connolly  
Cover Girl  
Crosby Square  
Debs  
Deevers  
Dr. Posner  
W. L. Douglas  
Edgerton  
Edith Henry  
Enna Jettick  
Evans Casuals  
Fashion Craft  
Fiancees  
Fleet-Aire  
Furtunet  
Four Kings  
Freeman  
Friedman Shelby  
Geberich-Paine  
Gerwinettes  
Glov-ettes  
Golo of Dunmore  
Grace Walker  
Hannahson's

Manufacturer

Wohl Shoe Company  
Connolly Shoe Company  
General Shoe Company  
House of Crosby Square  
Deb Shoe Company  
Deevers Shoe Company  
Dr. Posner Shoe Company  
General Shoe Company  
Nunn-Bush Shoe Company  
Lucky Stride Shoe Company  
Dunn McCarthy Shoe Co.  
L. B. Evans Company  
Craddock-Terry Shoe Corp.  
Clark Shoe Company  
Eby Shoe Company  
General Shoe Company  
A. S. Kreides and Sons  
Freeman Shoe Company  
International Shoe Company  
Geberich-Paine Shoe Company  
Shaw-Gerwin Shoe Co.  
Dodson-Fisher Shoe Company  
Golo Shoe Company  
International Shoe Company  
Middletown Shoe Company

Conflicting Line

Heydey's  
Holland Shoes  
Hollywood Skooter  
Hush Puppies  
Huth James  
Jacqueline  
Jarman  
Jumping Jacks  
Joyce  
Jolene  
Julius Altschul  
Junior Arch Preserver  
Kalistenika  
Kickerenos  
Lazy Bones  
Lucy's  
Lujano  
Main Aires  
Mansfield  
Massagic  
Miracle Tread  
Mrs. Day  
Natural Bridge  
Natural Poise  
Nazzaro  
Old Maine Trotters

Manufacturer

Heydey's Shoe Company  
Holland Racine Shoe Co.  
Vogue Shoe Company  
Wolverine Shoe Company  
Huth James Shoe Company  
Wohl Shoe Company  
General Shoe Company  
Vaisey Bristol Shoe Company  
Joyce Shoe Co. (U. S. Shoe Co.)  
Tober Saifer Shoe Co.  
Julius Altschul Co.  
U. S. Shoe Corp.  
The Gilbert Shoe Company  
Hampton Corporation  
Juvenile Shoe Corp.  
John Lucy Shoe Company  
Lujano Shoes (import)  
Northeast Shoe Company  
Bostonian Shoe Company  
Weyenberg Shoe Company  
Craddock-Terry Shoe Corp.  
Mrs. Day Shoes, Inc.  
Craddock-Terry Shoe Corp.  
Wohl Shoe Company  
Nazzaro Shoe Company  
Penobscot Shoe Company

<u>Conflicting Line</u>	<u>Manufacturer</u>
Paradise Kittens	Brauer Bros. Shoe Company
Penaljo	Hamilton Shoe Company
Perkies	Grinnell Shoe Company
Petite Debs	Wohl Shoe Company
Pied Pipers	Pied Piper Shoe Company
Pierre	Lester Pincus Shoe Co. (Jobber)
Pilgrims	Plymouth Shoe Company
Play Poise	Virginia Shoe Company
Portage	Weyenberg Shoe Company
Pro-Tek-Tiv	Curtis-Stephens-Embry Company
Queen Quality	International Shoe Company
Rand	International Shoe Company
Randcraft	International Shoe Company
Red Cross	U. S. Shoe Company
Revelation	Desco Shoe Corp.
Sandler	Sandler of Boston
Sebago Mocs	Sebago Moc Company
Show Offs	Ed White Junior Shoe Company
Simplex Flexies	Simplex Shoe Company
Smash Hits	Johansen Shoe Company
Spalding	Spalding Shoe Company
Stepmaster	Ettelbrook Shoe Company
Story Book	General Shoe Company
Trimfoot	Trimfoot Shoe Company

<u>Conflicting Line</u>	<u>Manufacturer</u>
Trim Tred	International Shoe Company
Town & Country	Town & Country Shoe Company
Trampeze	Sebago-Moc Company
Valentine	General Shoe Company
Velvet Step	International Shoe Company *
Vitality	International Shoe Company
Viner	Viner Shoe Company
Weather Bird	International Shoe Company
Westboro Men's Casuals	International Shoe Company
Willets	Willets Shoe Company

F.T.C. v. Brown Shoe Company, Docket No. 7606

List of Stores Showing Date  
First On Brown Franchise Program

<u>Store</u>	<u>Location</u>	<u>Date</u>
Blinkinsop Shoe Store	Marengo, Iowa	April 22, 1953
Bomar's	Jackson, Miss.	
Meadowbrook Mart		July 2, 1954
430 E. Capital Rd		July 8, 1947
Mart 51, 1700 Terry Rd		July 5, 1950
Colbert Shoe Store	Chippewa Falls, Wis.	Jan 29, 1947
	Marsh field, Wis.	Nov. 22, 1946
Clarence Faflik	Cleveland, Ohio	
9717 Lorain		August 25, 1954
20201 Van Aiken Rd		August 25, 1954
Fishers Shoe Store	Plymouth, Mich.	Dec 17, 1952
Grandes Shoes	Pittsburg, Calif	Oct 3, 1947
R. L. Holmes Shoe Store	Morristown, Tenn	1928
Hill and Shipe Shoe Stores	Ada, Okla	1930
	Ardmore, Okla	1933
	Norman, Okla	1931
	Sherman, Texas	1932
Howes Shoes	San Bernadino, Calif	Prior to 1932
Hub Shoe Store	Shelbyville, Ind.	Jan 10, 1950
Lilje's Shoe Store	Carbondale, Pa	July 14, 1950
Lindman Shoe Store	Milwaukee, Wis.	June 11, 1941
McCorp Midwest Shoes, Inc.	Centrallia, Ill	1946
Passmore Shoe Store	Sault St. Mari, Mich	July 14, 1941
Phillips Bootery	N. Hollywood, Calif.	July 27, 1949

[fol. 342E]

## RESPONDENT'S EXHIBIT 15

Number of Shoe Outlets in Towns and Cities of 5,000 to 30,000 Population in Which a Brown Franchise Store is Located.

Summary of Exhibit.

By letter dated November 28, 1960, J. R. Johnston, Manager of the Brown Franchise Division, sent a request to the fieldmen in that division asking them to "develop information on the *number* and *type* of retail establishments in which shoes are sold in towns of 5,000-30,000 population and in which a Brown IRD Store (formerly known as Brown franchise store) is located." The letter requested the fieldmen to gather this information as they visited such towns during the following three months.

The fieldmen sent in reports for 128 different locations of franchise stores from those listed in Commission's Exhibits 23-A to Z-24, 24-A to Z-33 (list of Brown franchise stores) and located in towns and cities of 5,000 to 30,000 population not in Standard Metropolitan Areas as defined and listed by the United States Office of Statistical Standards. According to Respondent's Exhibit 6, there were a total of 290 such towns and cities in which Respondent's franchise stores were located at that time, so that reports were received for approximately 44 per cent of the total.

The number of retail shoe outlets reported for each of the 128 locations is summarized below in three population groups which correspond to similar population groups in Respondent's Exhibit 6.

The summary gives the number of towns and cities, of the 128 reported, which contained the number of retail shoe outlets shown directly opposite in the left hand column of the summary. For example, the summary shows that five of the towns and cities in the 5,000-10,000 population group were each reported as having 12 retail shoe outlets. As another example, the summary shows that 4 of the towns and cities in the 10,000-20,000 population group each contained 15 retail shoe outlets.



[fol. 343E]

## Population Groups

Number of Retail  
Shoe Outlets

5,000-10,000

10,000-20,000

20,000-30,000

5	1		
6	3		
7	1		
8	2	1	
9	8	1	
10	2	1	
11	2	4	
12	5	1	1
13	5	5	
14	2	6	
15	3	6	1
16	2	4	3
17	1	3	2
18	2	3	3
19		6	3
20		7	2
21	1	1	2
22	1	2	5
23		1	2
24		1	3
25		1	
26			2
27			2
28			
29			1
30			1

[fol. 344E] IN THE SUPREME COURT OF THE UNITED STATES,  
OCTOBER TERM, 1965

No. 118

FEDERAL TRADE COMMISSION, Petitioner,

v.

BROWN SHOE COMPANY

On Writ of Certiorari to the United States Court of Appeals  
for the Eighth Circuit

STIPULATION OF RESPONDENT'S EXHIBIT 15

It is hereby stipulated and agreed by the parties that the attached summary of Respondent's Exhibit 15 shall be printed in the joint record before this Court in lieu of printing the entire Exhibit.

/s/ Thurgood Marshall, Solicitor General. /s/ Robert H. McRoberts, Bryan, Cave, McPheeters & McRoberts, Attorney for Respondent

December 10, 1965

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## CITATIONS

### Cases:

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## Statutes:

Clayton Act, 38 Stat. 730, as amended, 15

U.S.C. 12 *et seq.*:

Sec. 3----- Page 7, 14, 15

Sec. 7----- 7, 11

Federal Trade Commission Act, 38 Stat. 717,

as amended, 15 U.S.C. 41 *et seq.*:

Sec. 5----- 2, 3, 7, 8, 9, 10, 11, 12, 14, 16, 17

Sec. 5(a)----- 2, 3

# In the Supreme Court of the United States

OCTOBER TERM, 1964

No. —

FEDERAL TRADE COMMISSION, PETITIONER

v.

BROWN SHOE COMPANY, INC.

## PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

The Solicitor General, on behalf of the Federal Trade Commission, petitions for a writ of certiorari to review the judgment of the Court of Appeals for the Eighth Circuit entered in this case on December 8, 1964.

### OPINIONS BELOW

The opinion of the court of appeals (App. A, *infra*, pp. 1a-22a) is reported at 339 F. 2d 45. The opinion of the Federal Trade Commission (R. 53-89)<sup>1</sup> is not yet reported.

### JURISDICTION

The judgment of the court of appeals was entered on December 8, 1964 (App. B, *infra*, p. 23a). On March 8, 1965, Mr. Justice White extended the time for filing a petition for a writ of certiorari to and

<sup>1</sup> "R. —" refers to the printed three-volume record in the court of appeals.

including May 7, 1965. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

#### QUESTION PRESENTED

Pursuant to the "Franchise Stores Program" of the Brown Shoe Company, more than 700 independent retail shoe stores agreed, in return for specified benefits, to carry no line of shoes conflicting with Brown Shoe brands. The Federal Trade Commission held the "Franchise Stores Program" to be an unfair method of competition under Section 5 of the Federal Trade Commission Act, finding that the plan "effectively foreclosed \* \* \* [Brown's] competitors from selling to a significant number of retail shoe stores." The court of appeals, however, held (App. A, *infra*, p. 14a) that the Brown plan did not violate Section 5 because it involved sales methods which "have never heretofore been \* \* \* regarded as opposed to good morals because characterized by deception, bad faith, fraud or oppression, or as against public policy because of their dangerous tendency unduly to hinder competition or create monopoly' " (*Federal Trade Commission v. Gratz*, 253 U.S. 421, 427) and because the Commission had not shown the plan to be either a tying arrangement or an exclusive dealing arrangement in violation of the Clayton or Sherman Acts. The question presented is whether the court of appeals thus applied an unduly narrow construction of the Commission's powers under Section 5 of the Federal Trade Commission Act.

#### STATUTE INVOLVED

Section 5(a) of the Federal Trade Commission Act, 38 Stat. 717, 719, as amended, 15 U.S.C. 45(a), provides in part:

Unfair methods of competition in commerce, and unfair or deceptive acts or practices in commerce, are declared unlawful.

The Commission is empowered and directed to prevent persons, partnerships, or corporations \* \* \* from using unfair methods of competition in commerce and unfair or deceptive acts or practices in commerce.

#### STATEMENT

The court below set aside an order of the Federal Trade Commission prohibiting the Brown Shoe Company, Inc. ("Brown Shoe") from entering into or maintaining certain types of franchise agreements with independent shoe retailers.<sup>1a</sup> The proceeding before the Commission was instituted by a complaint (R. 3-9) filed by it on October 13, 1959, charging Brown Shoe with unfair methods of competition in violation of Section 5 of the Federal Trade Commission Act. Following extensive administrative proceedings, the Commission, on February 20, 1963, issued its opinion and final order. On the basis of the evidence adduced at the hearing (most of which, insofar as it is relevant here, is undisputed) the Commission found the following facts:

In 1959, Brown Shoe was the country's second largest manufacturer of shoes in terms of dollar volume (R. 76) and the third largest in terms of pairs

<sup>1a</sup> The court also reversed a Commission finding that Brown Shoe attempted to fix and maintain the retail prices at which its franchisees would sell Brown products (App. A, *infra*, pp. 21a-22a). Since that determination depended upon the substantiality of evidence to establish particular facts, review of it is not sought in this petition.



of shoes produced (*ibid.*). In addition to marketing its shoes through mail order houses and a substantial number of company-owned retail stores, Brown distributes shoes through several thousand independent retail shoe stores. More than 700 of these stores have agreed to join the "Brown Franchise Stores Program" (R. 3-4; 67; 22E-45E). Under this program, Brown offers a "package" of benefits and services, including "architectural plans, service of a field representative, merchandising records, retail sales training program, accounting system, national and regional meetings, and group purchasing of insurance, rubber footwear, and display material" (R. 65, note 17) in return for a promise (either written or oral) that the retailer will "[c]oncentrate my business within the grades and price lines of shoes representing Brown Shoe Company Franchises of the Brown Division *and will have no lines conflicting with Brown Division Brands of the Brown Shoe Company*" (emphasis added) (R. 56).<sup>2</sup> Brown Shoe sometimes permits its franchisees to remain in the plan (and thus receive its benefits) while carrying short or specialty lines which partially "conflict" with its own brands. In general, however, it is successful in excluding competitive lines from the stock of its franchisees (R. 68). On the average, franchised stores purchase 75 percent of their total shoe requirements from Brown, with most of the remainder consisting of either higher or lower price

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<sup>2</sup> The franchise agreement is terminable by either party upon 30 days' notice. However, the Commission found that in actual operation "the relationship between Brown and its franchisees is a reasonably stable one" (R. 68).

shoes than those available from Brown Shoe—shoes which do not constitute “conflicting” lines within the meaning of the agreement (*ibid.*).

The Brown franchise agreements are policed and enforced by a team of field men whose reports bore for a period of time the printed legend: “Encourage concentration on B.S.C. lines and elimination of conflicting lines” (R. 59). If particular retailers refuse to drop conflicting lines despite warnings, they are dropped from the franchise plan (R. 60). Non-franchise dealers can purchase shoes from Brown, but they do not receive most of the benefits offered under the plan to dealers who concentrate on Brown shoes (R. 60–61). During the years 1949 through 1955, Brown Shoe dropped 22 stores from the franchise program for “persist[ing] in carrying conflicting lines” (R. 60, 29) and from November, 1954, to April, 1958, more than a dozen dealers were similarly dropped (*ibid.*).

At the time of the hearing, a total of 766 independent shoe retailers were participating in the program (R. 67, 73). This was a “select group” all of whom were considered “the better credit risks” (R. 76–77). Between 1959 and 1961, the number of stores enrolled in the program increased 12 percent, even though the prospective number of good retail outlets was generally diminishing (R. 77).<sup>2</sup> In addition to these 766 franchised retailers, Brown Shoe sold to approxi-

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<sup>2</sup> The Commission found that this was part of a general trend to vertical integration in the shoe industry either by way of merger or contractual arrangements (R. 77).

mately 208 so-called "Wohl Plan" accounts, who were independent retailers partially financed by Brown Shoe and generally buying their requirements from a Brown subsidiary, the Wohl Shoe Company (R. 77). Another Brown Shoe subsidiary, the Regal Shoe Company, owned a chain of 92 retail outlets (R. 77). There was a total of 70,000 shoe dealers classified as "retail shoe outlets" at the time of the hearing (R. 73).

At the hearing, the Commission adduced evidence of the effect of the Brown franchise plan upon Brown's competitors—particularly upon small manufacturers. Thus, the Leverenz Shoe Company (a firm not among the top 70 (R. 179-E)), which in 1955 sold one account \$2,399.12 worth of shoes, lost the account altogether in 1956 when the dealer became a Brown Shoe franchisee (R. 70). Similarly, the Weyenberg Shoe Co. (the 46th largest manufacturer in the country in terms of pairage output (R. 179-E)) saw sales to two of its accounts drop from \$8,388 to \$186.00 and from \$2,782 to zero, respectively, when the dealers joined the Brown Shoe franchise program and agreed to drop conflicting lines (R. 70). And the Juvenile Shoe Corporation (ranked 60th in pairage output as contrasted with Brown Shoe's number 3 position (R. 179-E)), which had formerly sold as many as 1,530 pairs of shoes annually to a shoe store in Plymouth, Michigan, suffered a decline to only 188 pairs following the store's enrollment in the Brown Shoe franchise program (R. 70).

The Commission affirmed the examiner's finding that, as a result of Brown Shoe's franchise plan, its

"competitors are foreclosed from selling to the market represented by the franchise dealers" (R. 68). The Commission concluded that "[Brown's] operation of the franchise plan \* \* \* constitutes an unfair trade practice under Section 5 of the Federal Trade Commission Act" because it foreclosed Brown's competitors from selling to a "significant number of retail stores \* \* \*" (R. 73). In the Commission's view, "[t]he practice of conditioning the benefits of membership in the plan to adherence to the restrictive terms of the franchise agreement for the purpose of foreclosing other manufacturers from selling to its franchisees is akin to the operation of tying clauses generally held as inherently anticompetitive" (R. 73).

In reaching this conclusion, the Commission rejected (R. 74) Brown Shoe's argument that in a proceeding under Section 5 of the Federal Trade Commission Act challenging a trade practice primarily on the ground that it unduly foreclosed competition, the tests applicable to Sections 3 and 7 of the Clayton Act (whether the effect of a practice may be substantially to lessen competition or to tend to create a monopoly) must be applied. The Commission noted (R. 74) that "the former Act was designed \* \* \* to stop in their incipency acts and practices which, when full blown, would violate [the Clayton Act] \* \* \*" (footnote omitted). In any event, the Commission concluded (R. 75) after a full canvass of the market facts including the structure of the shoe industry, and in the light of this Court's decision in *Brown Shoe Co. v. United States*, 370 U.S. 294, "that the prospective competitive impact of the franchise

program is such that the standards of illegality under Section 3 and Section 7 of the Clayton Act, as amended, have been met." In summary, the Commission found (R. 79) that "[t]o foster the competitive position of the smaller manufacturers, Brown should be prohibited from entering into arrangements with its customers interfering with the latter's independent judgment in making purchasing decisions." Commissioner Elman concurred in this decision on the basis that the "exclusive vertical arrangements shown by this record have the requisite competitive effects \* \* \*" (R. 88-89).

The court of appeals reversed and directed dismissal of the complaint (App. A, *infra*, pp. 1a-22a). The court did not reject the Commission's findings as to the anticompetitive effect of the Brown Shoe franchise plan. Rather, relying on *Federal Trade Commission v. Gratz*, 253 U.S. 421, 427, the court ruled (App. A, *infra*, p. 13a) that the Brown Shoe franchise program "could [not] possibly be classified as an 'unfair method of competition' " since Brown, as well as International Shoe Company (the nation's leading manufacturer of shoes (R. 180-E)) and the General Shoe Company (the nation's third leading shoe producer (*ibid.*)), had operated similar programs for a number of years and "[n]o court has gone so far as to hold like programs or methods of doing business unlawful under Section 5 of the Federal Trade Commission Act and such programs or sales methods have never heretofore been \* \* \* regarded as opposed to good morals because characterized by deception, bad faith, fraud, or oppression, or as against public policy be-

cause of their dangerous tendency unduly to hinder competition or create monopoly' " (App. A, *infra*, p. 14a). The court went on to hold in some detail that Brown Shoe's franchise program did not constitute either an illegal tying arrangement under the Sherman Act or an exclusive dealing arrangement illegal under Section 3 of the Clayton Act. Finally, the court found this Court's decision in *Brown Shoe Co. v. United States*, *supra*, wholly irrelevant. In sum, the court concluded that "[b]y passage of the Federal Trade Commission Act, particularly § 5 thereof, we do not believe that Congress meant to prohibit or limit sales programs such as Brown Shoe engaged in in this case" (App. A, *infra*, p. 21a).

#### REASONS FOR GRANTING THE WRIT

The court of appeals has significantly and improperly restricted the power of the Federal Trade Commission under Section 5 of the Federal Trade Commission Act to deal with anticompetitive practices. Without considering the effect upon competition of the substantial market foreclosure which the Brown Shoe franchise plan caused, the court ruled that the Commission could not condemn the plan as an unfair method of competition under Section 5 because (1) under *Federal Trade Commission v. Gratz*, 253 U.S. 421, 427, such purchase plans "have never heretofore been 'regarded as opposed to good morals because characterized by deception, bad faith, fraud or oppression, or as against public policy because of their dangerous tendency unduly to hinder competition or create monopoly' \* \* \* " (App. A, *infra*, p. 14a);



and, because (2) in the court's view, they did not constitute tying or exclusive dealing arrangements that violated the Sherman or Clayton Acts. This holding wholly ignores the flexible nature of Section 5 and the Commission's power to give content to that section in light of particular anticompetitive practices disclosed through case-by-case adjudication, without being bound by traditional concepts of commercial morality or the relatively specific criteria of the Sherman and Clayton Acts.

The court of appeals decision will, unless reversed, seriously impede the power of the Commission to preserve competition through Section 5. There are presently pending before the Commission at least twelve investigations involving the practice of powerful suppliers, like Brown Shoe, of furnishing services and other benefits to customers in exchange for a promise to handle the supplier's products on a preferential or exclusive basis. These practices may, as in the present case, have a marked tendency to foreclose small suppliers from access to the market, thus seriously threatening competition. Under the holding of the court of appeals, however, since these practices have never, in the court's view, been "regarded as opposed to good morals \* \* \* or as against public policy because of their dangerous [anticompetitive] tendency," the Commission could not act under Section 5 unless it found a violation of either the Sherman or Clayton Acts. This Court should decide whether the strict limits thus imposed by the court of appeals upon the Commission's use of Section 5 are proper.



In addition, the case warrants review in order to effectuate this Court's decision in *Brown Shoe Co. v. United States*, 370 U.S. 294. Brown Shoe's effort there to preempt a substantial portion (yet smaller than that involved here) of the retail shoe market by acquisition was held to violate Section 7 of the Clayton Act. Under the ruling below, however, Brown (and other firms in other industries having similar programs of distribution) may accomplish similar results through the use of "franchise" programs and other devices which establish patterns of exclusive dealing.

1. The decision below is grounded upon an erroneous interpretation of the meaning and scope of Section 5 of the Federal Trade Commission Act. The court's reliance upon *Federal Trade Commission v. Gratz*, *supra*, completely ignores this Court's post-*Gratz* decisions which state that the Federal Trade Commission Act, and particularly Section 5, was enacted for the purpose of vesting the Commission with "adequate powers to hit at every trade practice \* \* \* which restrained competition or might lead to such restraint if not stopped in its incipient stages" (*Federal Trade Commission v. Cement Institute*, 333 U.S. 683, 693; emphasis added). As the Court stated in *Federal Trade Commission v. Motion Picture Adv. Serv. Co.*, 344 U.S. 392, 394-395:

Congress advisedly left the concept ["unfair methods of competition"] flexible to be defined with particularity by the myriad of cases from the field of business. \* \* \* It is also clear that the Federal Trade Commission Act was designed to supplement and bolster the Sherman Act and the Clayton Act \* \* \*—to stop in their incipiency acts and practices which, when

full blown, would violate those acts \* \* \* as well as to condemn as "unfair methods of competition" existing violations of them. \* \* \*

See also *Federal Trade Commission v. Keppel & Bros.*, 291 U.S. 304; *Fashion Originators' Guild v. Federal Trade Commission*, 312 U.S. 457; *Federal Trade Commission v. Bunte Bros.*, 312 U.S. 349. Insofar as *Gratz* limited the Commission's powers under Section 5 to traditionally immoral or monopolistic practices, it has been superseded by later cases. In these circumstances, it is important for judicial review of Commission orders that this Court should make it clear that the limitations which *Gratz* imposed upon the Commission's authority under Section 5 are no longer controlling.

2. Under principles properly defining the scope of Section 5, the Commission was warranted in condemning the Brown Shoe franchise program as an unfair method of competition in light of its anticompetitive effect and the lack of affirmative competitive justification. Most of the details of the operation of the program as found by the Commission are set out in the Statement, *supra* (pp. 3-9). It is undisputed that pursuant to the program, which has been expanding recently at a rate of about 12 percent every two years, Brown Shoe has eliminated some 766 choice independent retail dealers as actual and potential customers for its competitor manufacturers in the shoe industry. In addition, other large companies are, like Brown, acquiring exclusive outlets for their products through franchise programs. Thus, the International Shoe Company, the leading shoe producer

in the nation as of 1961, had approximately 1,400 independent retailers under its Merchants Service Plan, the membership of which expanded by 16 percent between 1959 and 1961 (R. 78). Similarly, the fourth ranking shoe producer, the General Shoe Company, had enrolled some 317 shoe retailers in its Friendly Franchise Store Plan (*ibid.*). The Commission found that the result of these plans is that a desirable portion of the retail shoe market is being foreclosed to small shoe manufacturers who, because they do not manufacture a full line of shoes, cannot offer similar plans and therefore cannot compete on equal terms (*ibid.*).

The effect of Brown Shoe's plan upon competition is not *de minimis*, for the 766 stores participating in the Brown franchise plan represent a substantial portion of the shoe market. These stores alone purchased \$24,675,677 worth of shoes from Brown in 1959, which exceeded by almost \$2 million the total sales of the tenth ranked shoe company in the industry (R. 76).<sup>4</sup> Nor is there any indication that what the Commission characterized as "a deteriorating competitive situation" (R. 79) in the shoe industry will reverse itself, or that Brown Shoe will dampen its efforts to sew up an even larger segment of the market than it now controls under the franchise program. To the contrary, the valuable inducements offered by Brown to its franchisees (including the promise of a much greater return on investment) in

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<sup>4</sup> As the Commission stated (*ibid.*): "This fact convincingly demonstrates the competitive disparity between [Brown Shoe] and the vast majority of shoe manufacturers."

exchange for the surrender of their purchasing freedom, indicates that unless restrained, the elimination of competition will become more pronounced. The effect upon competition thus found was, as the Commission held (R. 73), clearly sufficient to justify relief under Section 5.

3. In any event, the Commission properly concluded, (R. 75) with regard to the effect of the franchise program upon competition, that, even if it were necessary for it so to find, "the standards of illegality under Section 3 and Section 7 of the Clayton Act, as amended, have been met"—i.e., the effect of the Brown franchise program may be substantially to lessen competition or to tend to create a monopoly in the shoe industry (see also R. 74). It is true that in *Tampa Electric Co., v. Nashville Coal Co.*, 365 U.S. 320, 333, cited by this Court in *Brown Shoe*, the effect upon competition of a requirements contract foreclosing only .77 percent of the market was held not "substantial" under Section 3. Here, Brown Shoe has preempted 766 shoe dealers out of 70,000 retail shoe "outlets" (which includes such shoe "dealers" as department stores and other outlets not specializing in shoes (R. 73)), or approximately 1 percent of the total. But, as Brown Shoe itself recognizes (R. 25E, 42E), its franchise arrangement is geared for only about 19,000 choice independent dealers and, of that market, it has preempted approximately 4 percent. Moreover, while the percentage of the market foreclosed is important, it will seldom be determinative (370 U.S., *supra*, at 328). As the Commission stated in analyzing *Brown Shoe*, the facts of

which it deemed closely parallel to those of the instant case (R. 74-75):

There the Court, in considering the vertical aspects of an acquisition, found the probability of a substantial lessening of competition despite the fact that Brown's sales to the acquired concern, G. R. Kinney Company, Inc., constituted less than one per cent of shoe sales nationally after the acquisition. Holding that the market foreclosure demonstrated was neither of *de minimis* nor monopoly proportions, the Court ruled that in such cases the percentage of the market foreclosed by the vertical arrangement cannot itself be decisive and that it was, therefore, necessary to examine the various economic and historical factors in the relevant market to make the determination of whether the supplier-customer relationship is the type of arrangement which Congress sought to proscribe. [R. 74.]<sup>5</sup>

Reviewing those "economic" and "historical" factors (R. 76-79), which the court below completely ignored, the Commission concluded, as had this Court before it in *Brown Shoe*, that in light of the structure of the

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<sup>5</sup> This Court made it clear in *Brown Shoe* (370 U.S. at 339, n. 66) that the 766 Brown franchise stores can be considered as "Brown stores" for the purpose of determining retail market foreclosure. While the franchise agreements are theoretically terminable upon 30 days' notice by either party (a crucial factor in the decision of the court below in deciding there was no violation of Section 3 of the Clayton Act), in actual operation the franchise relationship tended to be quite stable, as the Commission found (R. 68). Many franchisees testified that they had been participating in the program for substantial periods of time (*e.g.*, R. 292, 390, 396, 409, 414, 417, 421, 430, 453, 463, 502, 510, 536, 570, 578, 601, 620).

shoe industry which demonstrates a definite trend toward vertical integration, the preemption by Brown of several hundred retail dealers as its exclusive dealers tends substantially to lessen competition.

4. Despite the foregoing, the court of appeals held that, since the standards of *Federal Trade Commission v. Gratz, supra*, were not satisfied and since in its view no tying or exclusive dealing arrangement had been established in violation of the Sherman or Clayton Acts, Section 5 of the Federal Trade Commission Act had not been violated.\* In so holding, the court did not overrule or challenge the Commission's findings as to the anticompetitive effect of the Brown Shoe program, nor did it offer any affirmative competitive justification for the franchise program. Thus, the Court has held that, despite the anticompetitive effects found by the Commission, on the basis of substantial evidence, to flow from the use of a commercial practice, the practice may not be restrained under Section 5 so long as it comports with

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\*The court devoted a large portion of its opinion (App. A, *infra*, pp. 14a-19a, 21a) to an effort to distinguish the Brown Shoe franchise program from the tying arrangements condemned in such cases as *Northern Pacific Ry. Co. v. United States*, 356 U.S. 1, and *United States v. Loew's, Inc.*, 371 U.S. 38. But the Commission did not hold that the line concentration and exclusivity conditions imposed by Brown Shoe on its franchisees was a tying clause; it stated merely (R. 73; emphasis added) that the condition in the franchise agreement prohibiting conflicting lines "is akin to the operation of tying clauses", which it is. See *Brown Shoe Co. v. United States*, 370 U.S. 294, 332 ("\* \* \* Brown would use its ownership of Kinney to force Brown shoes into Kinney stores. Thus, in operation this vertical arrangement would be quite analogous to one involving a tying clause").

traditional commercial morality and violates neither the Sherman Act nor the Clayton Act. This decision stands as a serious restriction upon the enforcement of Section 5 of the Federal Trade Commission Act which this Court should review.

#### CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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MAY, 1965.





APPENDIX A

(FTC Docket No. 7606)

United States Court of Appeals for the Eighth  
Circuit

No. 17336

BROWN SHOE COMPANY, INC., PETITIONER

v.

FEDERAL TRADE COMMISSION, RESPONDENT

*Petition to Review Order of Federal Trade  
Commission*

(December 8, 1964)

Before VOGEL, MATTHES and RIDGE, Circuit Judges.  
VOGEL, Circuit Judge.

This case arises from a petition to review an order of the Federal Trade Commission directed against Brown Shoe Company, Inc. The case was originally brought by the Commission under § 5 of the Federal Trade Commission Act which provides:

“§ 5(a)(1). Unfair methods of competition in commerce, and unfair and deceptive acts or practices in commerce, are declared unlawful.”  
66 Stat. 632 (1952), 15 U.S.C.A. § 45(a)(1) (1958).

The Commission's complaint, issued October 13, 1959, alleged that Brown Shoe Company, Inc., a manufacturer and distributor of shoes, violated § 5 through the operation of its franchise stores program and by fixing the retail prices at which its products were sold by dealers.

Count 1 alleged that Brown "entered into contracts or franchises with a substantial number of its independent retail shoe store operator customers which required said customers to restrict their purchases of shoes for resale to the Brown lines and which prohibit them from purchasing, stocking or reselling shoes manufactured by competitors of Brown". It charged that dealers having this relationship with Brown are termed "Brown Franchise Stores" and are afforded special treatment and given certain benefits not granted other customers.

Among the benefits or services listed in the Commission's complaint were "free signs, business forms and accounting assistance participation in lower cost group fire, public liability, robbery, and life insurance policies; and special, below list prices on U.S. Rubber Company canvas and waterproof footwear". In return for these services, the complaint charged that franchise dealers must "concentrate" their purchases of shoes upon "the grades and price lines" of shoes manufactured and sold by Brown. It further charged that such dealers must "refrain from stocking and selling shoes of competitors" and that dealers who violate their franchise agreement by doing so are dropped from the program and are deprived of the benefits available thereunder.

The Commission alleged that the "purpose, intent or effect" of such practices on the part of Brown was "substantially to lessen, hinder, restrain and suppress competition" in the distribution of shoes in interstate commerce and in general to "foreclose" or "exclude" competitors from a "substantial share" of the retail dealer market, thereby further enhancing the already powerful competitive position of Brown in the shoe industry.

Count 2 of the Commission's complaint charged petitioner with resale price fixing in forcing or requiring

its retail dealers to "agree to maintain arbitrary, non-competitive resale consumer prices fixed and promulgated by Brown."

In connection with Count 2, the complaint alleged that petitioner "regularly publishes and distributes" to its customers "price lists or catalog lists" containing "the consumer prices to be observed" by them and that petitioner "frequently publishes" these prices in "full page advertisements in magazines having national circulation".

The complaint charged that through its representatives and officials Brown "maintains continuous pressure" upon its dealers "to insure that they do not depart from or sell below the minimum retail prices" established. It charged that non-adherents to these prices "are immediately contacted by Brown representatives" to insure compliance by "persuasion" if possible but "if that fails, to threaten and inform" such dealers that petitioner "will discontinue doing business" with them.

The acts and practices of petitioner set forth in both counts of the complaint were alleged to constitute unfair methods of competition and unfair acts and practices in commerce within the intent and meaning of § 5 of the Federal Trade Commission Act.

Brown, through its answer, generally denied the charges in the complaint. With reference to Count 1, however, Brown admitted entering into "contracts or franchises" with approximately 259 retail dealers. In addition, it declared that there were approximately 423 dealers operating on a "Brown Franchise Program" who had not executed such written agreements.

The franchise agreement in question admittedly contained a provision stating that in return for the services and benefits described, the franchise dealers must "concentrate" their business upon products man-

ufactured by Brown. Brown admitted that the operators of such Brown franchise stores "in individually varying degrees" accepted benefits and performed the obligations contained in such franchise agreements implicit in such program. It further admitted that in general the enumerated services and benefits are not available to those dealers "who are dropped or voluntarily withdraw" from the program.

In answer to Count 2, petitioner admitted only that it "regularly distributes to its retail shoe customers price lists or catalog sheets, certain of which contain suggested retail selling prices" and that "on occasions it publishes suggested retail selling prices in full page advertisements in magazines having national circulation".

Following extensive hearings in St. Louis, Missouri; Milwaukee, Wisconsin; Dallas, Texas; Washington, D.C.; Los Angeles and San Francisco, California; and Portland, Oregon, the Hearing Examiner issued an initial decision in which he found that the charges set forth in both counts of the complaint were sustained by the evidence, and entered an order requiring Brown to cease and desist from these practices. Brown took exception to the Examiner's findings and petitioned the Commission for a review. Its petition was granted. After hearing the matter on briefs and oral arguments, the Commission modified a portion of the Examiner's decision to conform to its own views. As thus modified and as supplemented by its own opinion, the initial decision of the Hearing Examiner was adopted.

In modifying the initial decision, the Commission deleted therefrom the Examiner's findings as to the substantial effect of the Brown franchise program on competition and substituted therefor its own findings. It held that it was not necessary to examine the prob-

able effect of petitioner's program upon competition in order to find that the program was an unfair trade practice violative of § 5 of the Federal Trade Commission Act, but that in any event, on the authority of *Brown Shoe Co., Inc. v. United States*, 1962, 370 U.S. 294,<sup>1</sup> the prospective competitive impact of the program was such as to render it unlawful. The Commission stated:

"We have found that Brown's operation of the franchise plan constitutes an unfair trade practice violative of Section 5 of the Federal Trade Commission Act. We conclude, therefore, that Count 1 of the complaint has been sustained. Moreover, an examination of the market facts of the shoe industry, as developed in this record in the light of the Brown

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<sup>1</sup> Therein the United States brought suit to enjoin consummation of a merger of two corporations (Brown Shoe Company, Inc., the petitioner herein, and the G. R. Kinney Company, Inc., eighth largest retailer of shoes) on the ground that its effect might be to substantially lessen competition or tend to create a monopoly in the production, distribution and sale of shoes in violation of § 7 of the Clayton Act, as amended 1950. The District Court had found that the merger would increase concentration in the shoe industry, both in manufacturing and retailing, eliminate one of the corporations as a substantial competitor in the retail field, and establish a manufacturer-retailer relationship which would deprive all but the top firms in the industry of a fair opportunity to compete and that therefore it probably would result in a fairly substantial lessening of competition and an increased tendency toward monopoly. In affirming the District Court, the Supreme Court said at page 346 of 370 U.S.:

"We cannot avoid the mandate of Congress that tendencies toward concentration in industry are to be curbed in their incipency, particularly when those tendencies are being accelerated through giant steps striding across a hundred cities at a time. In the light of the trends in this industry we agree with the Government and the court below that this is an appropriate place at which to call a halt."

Shoe decision, persuades us that the prospective competitive impact of the franchise program is such that the standards of illegality under Section 3 and Section 7 of the Clayton Act, as amended, have been met."

On May 1, 1963, Brown filed its petition to review the order of the Commission on the grounds that such order and the findings and opinion upon which it was based are arbitrary and capricious, not supported by any substantial evidence, not in accordance with law, and lacking in due process. Petitioner has asked to have the order set aside and the complaint dismissed. The findings of the Commission and the Examiner may be summarized as follows:

Petitioner, Brown Shoe Company, Inc. is a New York corporation with its office and principal place of business in St. Louis County, Missouri. It is primarily engaged in the manufacture and distribution of nationally advertised medium-priced men's, women's and children's shoes. Brown and its subsidiaries operate over 50 manufacturing, supply and service plants located throughout the United States and Canada. In 1959, this complex ranked third in shoe pairage production among the country's approximately 900 to 1,000 shoe manufacturers. These manufacturers produced 632 million pairs of leather shoes in 1959.

The shoes manufactured by Brown and its subsidiaries are marketed on a nation-wide basis, primarily through sales at wholesale to independent retail customers, including individual shoe stores, chain stores, department stores and specialty stores. Apart from its subsidiaries, Brown was selling to approximately 6,000 retail customers at the time the complaint was issued.

Brown was second in dollar sales and third in pairage production in the shoe industry in 1958 and



1959.<sup>2</sup> Although total dollar sales for the fiscal year ending October 31, 1959, were \$276,549,164,<sup>3</sup> this figure included sales at wholesale and at retail by Brown and its subsidiaries and included inter-company sales as well. Brown's sales at wholesale for the same period to its 6,000 independent retail shoe store customers were \$111,292,872. That same year (1959) the top 70 shoe manufacturing firms in the industry had total dollar sales of 1.8 billion dollars.

Brown maintains an extensive distribution system. It is organized into separate selling divisions through which it markets its various brands of shoes to its retail customers.

The division of Brown which is of paramount importance under Count 1 of the complaint is the franchise stores division. The personnel of this division include a manager, two assistants and 16 salaried "field men" who travel in assigned territories servicing various franchise accounts. The franchise division manager is responsible to the vice president in charge of sales.

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<sup>2</sup> This included the dollar sales and pairage production of G. R. Kinney Corporation, at that time a wholly-owned subsidiary of Brown operated as a separate business by court order. Brown has since divested itself of Kinney, pursuant to court order. In 1957 Kinney's net sales while a subsidiary of Brown were \$62,000,000. If Kinney's sales (and any reasonable pairage production estimate) are subtracted from the figures shown for the top seventy shoe manufacturers, Brown would be third in dollar sales and fourth in pairage produced for 1958 and 1959. *Brown Shoe, supra*.

<sup>3</sup> Includes sales by G. R. Kinney Corporation. Kinney was formerly an independently operated company. At the time of the hearings it was a wholly-owned subsidiary of Brown. Subsequently, petitioner's merger with this company was declared illegal under § 7 of the Clayton Act, the anti-merger provision, 64 Stat. 1125 (1950), 15 U.S.C.A. § 18 (1958), and petitioner was ordered to divest itself of Kinney. *Brown Shoe, supra*.

Petitioner's franchise stores program has been in operation for approximately 30 years. More recently the number of dealers under this program has increased. In November 1959 there were 682 retailers in the system. By October 1961, at the conclusion of reception of evidence herein, the number of franchisees had increased to about 767.

Petitioner makes no distinction between dealers having written franchise agreements with it and those who do not insofar as any benefits or obligations under the program are concerned. In November 1957 petitioner had written franchise agreements with approximately 260 dealers.

The Brown franchise agreement requires that the retail dealer—in return for various enumerated services and benefits—must:

“\* \* \* concentrate my business within the grades and price lines of shoes representing Brown Shoe Company Franchises of the Brown Division and will have no lines conflicting with Brown Division Brands of the Brown Shoe Company.”

Several valuable benefits and services are afforded franchise holders. Specifically mentioned in the franchise agreement are: The services of field representatives; the use of merchandising forms and records; retail sales training programs; accounting system installation; group purchasing of insurance, rubber footwear and display materials; and the opportunity to participate in national and regional sales meetings.

The Commission found that the “prime motivation” of dealers in joining and continuing on the franchise program was the above-described benefits and services available to them. The Commission recognized that not every dealer utilized each benefit, but found that “collectively” these benefits achieved the intended effect; viz., attracting selected retailers to the program

and inducing them to comply with its restrictive requirements.

The Commission found that these requirements as set forth in the franchise agreement were applicable to "signer and non-signer franchise holders alike"; that this agreement not only "on its face" restricted competitive purchasing of franchise dealers, but that petitioner's field men actively policed dealers to insure their concentration upon Brown lines and elimination of competing products; that franchise dealers who persisted in carrying conflicting lines were separated from the program.

The Commission found that although franchise dealers theoretically may be free to quit the program and return to their former status, the record on the whole showed that the relationship between Brown and its franchise dealers was "reasonably stable". The Commission likewise took into account evidence showing that franchise dealers sometimes handled certain types and quantities of competitive shoes. It held that such evidence did not vitiate its finding that competitors were foreclosed from selling to franchise dealers in substantial amounts and that other evidence of record established this. (The record indicates that Brown franchise dealers purchase approximately 25% of their shoes from other manufacturers. A part of this 25% was made up of lines in competition with Brown.)

In sum, the Commission held that petitioner's operation of its franchise program, which it found effectively foreclosed competitors from making substantial sales to a significant number of desirable retail outlets, constituted an unfair trade practice in violation of § 5 of the Federal Trade Commission Act. The Commission further found that petitioner's practice of conditioning the above-described benefits of mem-

bership in the program upon adherence to the restrictive terms of the franchise agreement was "akin to the operation of tying clauses generally held as inherently anti-competitive". In addition, the Commission, after examining the various economic factors in the shoe industry, was persuaded "\* \* \* that the prospective competitive impact of the franchise program is such that the standards of illegality under Section 3 and Section 7 of the Clayton Act, as amended, have been met."

As to Count 2 of the complaint, the Commission found that petitioner entered into agreements with its retail dealers that its suggested retail prices would be followed and that it attempted to enforce and had in fact effectuated compliance with such agreements. The Commission found that Brown communicates the prices it establishes in "various ways". Most of Brown's selling divisions furnish their salesmen and customers with price lists containing a retail price "suggested" by petitioner. The Commission further found that advertising is another method used by petitioner to establish retail prices. On the whole, the Commission's evidence relating to Count 2 of the complaint concerns transactions with two of Brown's franchise stores and their pricing policies.

When this case was first instituted on October 13, 1959, it obviously was the theory of the Federal Trade Commission that—Brown's franchise stores program was an unlawful exclusive dealing arrangement violative of § 5 of the Act. It was so found by the Hearing Examiner and decided by him on that basis. The Commission struck such findings of the Examiner, stating:

"In short, from our review of the record, we find that respondent's operation of the franchise plan, which has effectively foreclosed its

competitors from selling to a significant number of retail shoe stores, constitutes an unfair trade practice under Section 5 of the Federal Trade Commission Act. Respondent's practice of conditioning the benefits of membership in the plan to adherence to the restrictive terms of the franchise agreement for the purpose of foreclosing other manufacturers from selling to its franchisees is akin to the operation of tying clauses generally held as inherently anti-competitive."

A proceeding under § 5 of the Federal Trade Commission Act is not one brought before the Commission by one party against another. It is instituted by the Commission itself and may be commenced whenever the Commission has reason to believe that "unfair methods of competition in commerce and unfair or deceptive acts or practices in commerce \* \* \*" have been used by the party against whom it proceeds.

"\* \* \* The object of the Trade Commission Act was to stop in their incipency those methods of competition which fall within the meaning of the word 'unfair.' The great purpose of both statutes was to advance the public interest by securing fair opportunity for the play of the contending forces ordinarily engendered by an honest desire for gain." *Federal Trade Comm. v. Sinclair Co.*, 261 U.S. 463, 476. All three statutes [the Sherman Anti-Trust Act, the Clayton Act and the Federal Trade Commission Act] seek to protect the public from abuses arising in the course of competitive interstate and foreign trade." *Federal Trade Commission v. Raladam Co.*, 1931, 283 U.S. 643, 647, 51 S. Ct. 587, 75 L. Ed. 1324.

Our primary question is whether there was adequate evidentiary basis for the Commission's findings that the Brown franchise program was an unfair method of competition and accordingly unlawful

under § 5 of the Act. The Act itself provides, 15 U.S.C.A. § 45(c) “\* \* \* the findings of the Commission as to the facts, if supported by evidence, shall be conclusive.” The use of identical language with reference to the findings of the National Labor Relations Board under the Wagner Act caused the Supreme Court to say in *Universal Camera Corp. v. N.L.R.B.*, 1951, 340 U.S. 474, 488, 71 S. Ct. 456, 95 L. Ed. 456:

“\* \* \* The substantiality of evidence must take into account whatever in the record fairly detracts from its weight. This is clearly the significance of the requirement in both statutes that courts consider the whole record. \* \* \*

“To be sure, the requirement for canvassing ‘the whole record’ in order to ascertain substantiality does not furnish a calculus of value by which a reviewing court can assess the evidence. Nor was it intended to negative the function of the Labor Board as one of those agencies presumably equipped or informed by experience to deal with a specialized field of knowledge, whose findings within that field carry the authority of an expertness which courts do not possess and therefore must respect. Nor does it mean that even as to matters not requiring expertise a court may displace the Board’s choice between two fairly conflicting views, even though the court would justifiably have made a different choice had the matter been before it *de novo*. Congress has merely made it clear that a reviewing court is not barred from setting aside a Board decision when it cannot conscientiously find that the evidence supporting that decision is substantial, when viewed in the light that the record in its entirety furnishes, including the body of evidence opposed to the Board’s view.”

With reference to what is “unfair” within the purview of § 5 of the Act, the Supreme Court has said in



*Federal Trade Commission v. Gratz*, 1920, 253 U.S. 421, 427, 40 S. Ct. 572, 64 L. Ed. 993:

"The words 'unfair method of competition' are not defined by the statute and their exact meaning is in dispute. It is for the courts, not the commission, ultimately to determine as a matter of law what they include. *They are clearly inapplicable to practices never heretofore regarded as opposed to good morals because characterized by deception, bad faith, fraud or oppression, or as against public policy because of their dangerous tendency unduly to hinder competition or create monopoly.* The act was certainly not intended to fetter free and fair competition as commonly understood and practiced by honorable opponents in trade." (Emphasis supplied.)

And in *Federal Trade Commission v. Raladam Co.*, supra, 1931, 283 U.S. 643, 648, 51 S. Ct. 587, 75 L. Ed. 1324:

"\* \* \* It [the words 'unfair methods of competition'] belongs to that class of phrases which do not admit of precise definition, but the meaning and application of which must be arrived at by what this court elsewhere has called 'the gradual process of judicial inclusion and exclusion.' *Davidson v. New Orleans*, 96 U.S. 97, 104. The question is one for the final determination of the courts and not of the Commission. *Federal Trade Comm. v. Gratz*, 253 U.S. 421, 427; *Federal Trade Comm. v. Beech-Nut Co.*, supra, p. 453."

Our question here is whether Brown's program could possibly be classified as an "unfair method of competition". What Brown did in the operation of its Brown franchise stores program it had been doing for at least thirty years prior to the institution of this proceeding. Similar programs are operated by its competitors, such as International Shoe Company's



Merchants Service Plan and General Shoe Company's General Shoes Friendly Franchise Store Plan.<sup>4</sup> No court has gone so far as to hold like programs or methods of doing business unlawful under § 5 of the Federal Trade Commission Act and such programs or sales methods have never heretofore been " \* \* \* regarded as opposed to good morals because characterized by deception, bad faith, fraud or oppression, or as against public policy because of their dangerous tendency unduly to hinder competition or create monopoly." 253 U.S. at page 427.

The Commission would liken Brown's program to "tying arrangements", relying on *Northern Pacific Railway Co. v. United States*, 1958, 356 U.S. 1, 78 S. Ct. 514, 2 L. Ed. 2d 545, and other cases. *Northern Pacific* is factually distinguishable. The railway company there possessed a monopoly of some 40,000,000 acres of land along the route of its railroad line from Lake Superior to Puget Sound. The company tied the sale or lease of its land to the use of its hauling services by inserting "preferential routing" clauses in its contracts for sale and leases which compelled the buyer or lessee to ship over Northern Pacific's lines all commodities produced or manufactured on the land provided its rates were equal to those of competing carriers. The railway used its great economic power provided by the land to enforce the use of its transportation facilities.

Analyzing what Brown Shoe Company did in the instant case insofar as its Brown franchise stores program is concerned, we find:

1. It made agreements, some in writing but more orally, in which it agreed to furnish certain services to

---

<sup>4</sup>As of 1961 International Shoe had some 1,400 independent retailers under its Merchants Service Plan; while some 317 shoe retailers were members of General Shoe's Friendly Franchise Store Plan.

those of its customers who would "concentrate" their business on shoes manufactured by Brown.

2. The services were free of charge with the exception of the fact that Brown's four seasonal window display props for two windows cost \$500 to \$600 per year and were available as well to other independent retail shoe store customers of Brown.

3. Brown did not have a monopoly on the services which constituted the tying product nor did it have a monopoly on the tied product—shoes.

4. Brown's competitors also furnished services in connection with the sale of their shoes.

5. Retailers were free to abandon the arrangement at any time they saw it to their advantage so to do.

6. Most of the services were available to customers who did not join in the Brown franchise program.

The Commission draws a parallel between the effect of the sale or lease by the railroad of its land in *Northern Pacific* with Brown's giving its services to the participants of Brown's franchise stores program, thus forcing them to buy Brown's shoes.<sup>5</sup>

We find no comparability between Brown's situation and that which existed in *Northern Pacific*. The Supreme Court, in holding the tying arrangement in *Northern Pacific* as being unlawful *per se*, stated at page 5 of 356 U.S.:

"\* \* \* Among the practices which the courts have heretofore deemed to be unlawful in and of themselves are price fixing, *United States v. Socony-Vacuum Oil Co.*, 310 U.S. 150, 210; division of markets, *United States v. Addyston Pipe & Steel Co.*, 85 F. 271, aff'd, 175 U.S. 211; group boycotts, *Fashion Originators' Guild v.*

<sup>5</sup> The Commission states in its brief: "In this, it resembles the converse of the situation presented in *Northern Pacific*, where the railroad's freight services were 'tied' to the use of its products (the valuable lands involved). 356 U.S. 1 (1958)."

*Federal Trade Comm'n*, 312 U.S. 457; and tying arrangements, *International Salt Co. v. United States*, 332 U.S. 392.

"For our purposes a tying arrangement may be defined as an agreement by a party to sell one product but only on the condition that the buyer also purchases a different (or tied) product, or at least agrees that he will not purchase that product from any other supplier. Where such conditions are successfully exacted competition on the merits with respect to the tied product is inevitably curbed. Indeed 'tying agreements serve hardly any purpose beyond the suppression of competition.' *Standard Oil Co. of California v. United States*, 337 U.S. 293, 305-306. They deny competitors free access to the market for the tied product, not because the party imposing the tying requirements has a better product or a lower price but because of his power or leverage in another market. At the same time buyers are forced to forego their free choice between competing products. For these reasons 'tying agreements fare harshly under the laws forbidding restraints of trade.' *Times-Picayune Publishing Co. v. United States*, 345 U.S. 594, 606. They are unreasonable in and of themselves whenever a party has sufficient economic power with respect to the tying product to appreciably restrain free competition in the market for the tied product and a 'not insubstantial' amount of interstate commerce is affected. *International Salt Co. v. United States*, 332 U.S. 392. Cf. *United States v. Paramount Pictures*, 334 U.S. 131, 156-159; *United States v. Griffith*, 334 U.S. 100. Of course where the seller has no control or dominance over the tying product [franchise services] so that it does not represent an effectual weapon to pressure buyers into taking the tied item [shoes] any restraint of trade attributable to such tying arrangements would obviously be insignificant at most.

As a simple example, if one of a dozen food stores in a community were to refuse to sell flour unless the buyer also took sugar it would hardly tend to restrain competition in sugar if its competitors were ready and able to sell flour by itself." (Emphasis supplied.)

Holding at page 7 of 356 U.S. that

"\* \* \* the undisputed facts established beyond any genuine question that the defendant possessed substantial economic power by virtue of its extensive landholdings which it used as leverage to induce large numbers of purchasers and lessees to give it preference, to the exclusion of its competitors, in carrying goods or produce from the land transferred to them. Nor can there be any real doubt that a 'not insubstantial' amount of interstate commerce was and is affected by these restrictive provisions."

the court goes on to say at page 11 of 356 U.S.:

"\* \* \* the vice of tying arrangements lies in the use of economic power in one market to restrict competition on the merits in another, regardless of the source from which the power is derived and whether the power takes the form of a monopoly or not."

While it is clear that a "not insubstantial" amount of interstate commerce is involved here, that fact alone does not make petitioner's program an "unfair" method of competition nor may the selling activities of petitioner be described as "deceptive acts or practices". In *Brown* there was no "sale" of the *tying* product (franchise services); there is no evidence that Brown's "power or leverage" in the tying product was such as to force the purchase of the "tied products" (shoes). This case presents a situation where the seller, Brown, has no control or dominance over the tying product, services; consequently, the Brown

franchise program is not an "effectual weapon" to pressure buyers into taking the tied item, shoes.

If the free services which Brown Shoe Company gives its customers who buy its shoes under its Brown franchise program can be found to be unlawful under § 5 of the Act, then the next logical step would be to hold unlawful an agreement by a manufacturer or distributor to advertise its products in fixed areas if retailers therein would agree to stock and to sell them.

We likewise find no comparability between the facts with which we are here concerned and *United States v. Loew's Inc.*, 1962, 371 U.S. 38, wherein the Supreme Court adopts the trial court's apt example of "\* \* \* forcing a television station which wants 'Gone With The Wind' to take 'Getting Gertie's Garter' as well as taking undue advantage of the fact that to television as well as motion picture viewers there is but one 'Gone With The Wind.'" There is more than one source from which the Brown franchise dealers can obtain the services complained about. Brown had no monopoly on services performed under the franchise program. Other manufacturers can and do render like services.

Nor do we find *United States v. Jerrold Electronics, Inc.*, E.D. Pa., 1960, 187 F. Supp. 545, affirmed by the Supreme Court on the basis of *Northern Pacific, International Salt*, etc., at 365 U.S. 567, comparable to the facts with which we are here concerned. In *Jerrold* the trial court said at page 555 of 187 F. Supp.:

"\* \* \* Jerrold's highly specialized head end equipment was the only equipment available which was designed to meet all of the varying problems arising at the antenna site. It was thus in great demand by system operators. This placed Jerrold in a strategic position and gave it the leverage necessary to persuade cus-

tomers to agree to its service contracts. This leverage constitutes 'economic power' sufficient to invoke the doctrine of *per se* unreasonableness."

There is no parallel between the facts present in *Jerrold* and those presented here. Brown's franchise program was not the only program available to retailers. It did not give Brown the economic leverage to force the sale of its shoes. The tying product in *Jerrold* was highly specialized equipment which was in great demand. There is nothing specialized or unique about the services offered by Brown.

The Commission alternatively relies on *Brown Shoe Co., Inc. v. United States*, supra, 370 U.S. 294, 82 S. Ct. 1502, 8 L. Ed. 2d 510, as persuading it "\* \* \* that the prospective competitive impact of the franchise program is such that the standards of illegality under Section 3 and Section 7 of the Clayton Act, as amended, have been met." We cannot agree. That case tested the illegality of Brown's acquisition of Kinney through a merger of the corporations and found that the vertical arrangements were illegal under §§ 3 and 7 of the Clayton Act. We find it utterly unpersuasive here. Brown has not "acquired" the retail outlets of those who join its program. The latter are free to leave it at any time. The only similarity between this case and the previous *Brown Shoe Co.* decision, supra, is the fact that the same corporation is involved in both disputes.

This case can be likened to *Timken Roller Bearing Co. v. F.T.C.*, 6 Cir., 1962, 299 F. 2d 839, certiorari denied, 371 U.S. 861, 9 L. Ed. 2d 99. There Timken was found by the Federal Trade Commission to be in violation of § 3 of the Clayton Act, 15 U.S.C.A. § 14, by following a consistent policy of "exclusive dealing". The court, in setting aside the Commission's order and findings, said beginning at page 840:



"In support of the accusations contained in the Complaint, the Commission introduced in evidence numerous documents purporting to prove Timken's consistent policy of exclusive dealing. The majority of these documents consisted of salesmen's reports to the Timken home office, recommending the taking on of a new account or the canceling of an old one. In our view, the Commission's whole case rests upon the fact that in these reports, the 'salesmen either recommended Timken's taking on a new account because it would be 'loyal' to that company, or suggested that an old account be cancelled because the dealer was stocking the products of a Timken competitor.

\* \* \* \*

"\* \* \* Nor can the documents alone be substantial evidence of such a policy, inasmuch as, even if these reports show that Timken cancelled dealers' accounts because they were dealing in competitive bearings, this alone is not illegal. Perhaps the rule has best been stated for our purposes in the following language: 'The anti-trust laws do not prohibit a manufacturer or distributor from selecting dealers who will devote their time and energies to selling the former's products and a manufacturer is not compelled to retain dealers having divided loyalties adverse to the interests of the said manufacturer or distributor.' *McElhenny Co., Inc. v. Western Auto Supply Co.*, 167 F. Supp. 949, at page 954, affirmed 269 F. 2d 332 (C.A. 4).

"A seller has the right to select his own customers. This right is protected by the Clayton Act, itself. 15 U.S.C.A., § 13. The right has been recognized by the authorities, even where it was not expressly provided for by the statute. *United States v. Colgate & Company*, 250 U.S. 300, 39 S. Ct. 465, 63 L. Ed. 992; *Times-Picayune Publishing Company v. United States*, 345 U.S. 594, 73 S. Ct. 872, 97 L. Ed. 1277; *Naifeh*



*v. Ronson Art Metal Works*, 218 F. 2d 202 (C.A. 10). To uphold the order entered by the Commission in this case would be, in effect, to destroy this right."

By passage of the Federal Trade Commission Act, particularly § 5 thereof, we do not believe that Congress meant to prohibit or limit sales programs such as Brown Shoe engaged in in this case. No monopoly of either services or shoes could be established. The custom of giving free service to those who will buy their shoes is widespread, and we cannot agree with the Commission that it is an unfair method of competition in commerce. The more and better service that Brown gave to its customers, the more it strengthened their "loyalty" to Brown Shoe. The fact that Brown franchise dealers were successful, having an average return of 16% against an average return of other independent shoe dealers in America of 11.8% certainly does not operate against the legality of the program. We hold that the Brown franchise stores program was not an unlawful tying arrangement and that there was a complete failure to prove an exclusive dealing agreement which might be held violative of § 5 of the Act.

With reference to Count 2, it is the contention of the Commission that there was substantial evidence in the record to support its finding that the petitioner engaged in unlawful resale price maintenance. Evidence on this count involves only 2 of approximately 6,000 independent shoe retail customers of Brown—Fraver's Shoe Store of Chambersburg, Pennsylvania, and Pomeroy's Department Store in Harrisburg, Pennsylvania. The Fraver incident is very much disputed and is based upon an unauthorized letter never used. The Pomeroy incident is based entirely on disputed testimony, by far the greater weight

of which favored petitioner's contention, not the findings and inference of the Commission. Even under this court's limited scope of review, *Universal Camera Corp. v. N.L.R.B.*, 1951, 340 U.S. 474, 488, 71 S. Ct. 456, 95 L. Ed. 456, we are of the opinion that the findings and conclusions of the Commission and the order based upon them must be set aside as not supported by substantial evidence on the record considered as a whole.

The order and opinion of the Commission are set aside and the Commission's complaint and each count thereof ordered dismissed.

A true copy.

Attest: Clerk, U.S. Court of Appeals, Eighth Circuit.

## APPENDIX B

### JUDGMENT

United States Court of Appeals for the Eighth  
Circuit

No. 17336. September Term, 1964

BROWN SHOE COMPANY, INC., PETITIONER

v.

FEDERAL TRADE COMMISSION

*Petition to Review Order of Federal Trade  
Commission*

This cause came on to be heard on the petition to review Order of the Federal Trade Commission and was argued by counsel.

On Consideration Whereof, it is now here Ordered and Adjudged that the final Order and Opinion of the Federal Trade Commission of February 20, 1963, be, and is hereby set aside and the complaint of the Commission and each of the counts thereof, be, and is hereby dismissed.

December 8th, 1964.

(23a)



**FEDERAL TRADE COMMISSION**  
**Washington, D. C.**

**BROWN SHOE COMPANY**  
**Respondent**

**RESPONDENT'S BRIEF IN OPPOSITION  
TO A WRIT OF HABEAS CORPUS  
UNITED STATES COURT OF APPEALS  
NINTH CIRCUIT**

**WILLIAM B. BROWN**  
**Attorney for Respondent**  
**1000 ...**  
**San Francisco, California**

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No. 1141.

IN THE  
**SUPREME COURT OF THE UNITED STATES.**

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OCTOBER TERM, 1964.

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FEDERAL TRADE COMMISSION,  
Petitioner,

v.

BROWN SHOE COMPANY, INC.,  
Respondent.

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**RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT.**

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**QUESTION PRESENTED.**

It appears that Petitioner has misconceived the scope and effect of, and the basis for, the judgment sought to be reviewed. Because of such misconception, under the caption "Question Presented", page 2, the question which is presented on this petition has been incorrectly stated.

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"Pet. p. ..." refers to the Petition for Writ of Certiorari. "Pet. A., p. ..." refers to the opinion of the Court of Appeals set forth as Appendix A to the Petition for Writ of Certiorari. "R. p. ..." refers to the three volume record in the Court of Appeals.

As we shall point out below, the question is not whether the Court of Appeals has applied an unduly narrow construction of the Commission's powers under Section 5 of the Federal Trade Commission Act, which it did not, but rather whether the decision of the Court of Appeals that there was no adequate evidentiary basis for the Federal Trade Commission's findings should be reviewed by this Court.

### **STATEMENT.**

Under the caption "Statement" (Pet. pp. 3-9), Petitioner summarizes some of the facts found by the Commission upon which it based its conclusion that the Franchise Stores Program of Brown Shoe Company (Brown) constituted an unfair method of competition.

We understand that this Court will not issue its writ of certiorari merely for the purpose of reviewing the correctness of a decision of a Court of Appeals as to whether there was or was not an adequate evidentiary basis for the Federal Trade Commission's findings. Accordingly, we will not here undertake to discuss or amplify the Petitioner's statement with respect to the evidence offered before the Commission, with one exception.

On Pet. p. 8 the statement is made that "The court did not reject the Commission's findings as to the anticompetitive effect of the Brown Shoe franchise plan." We suggest that an examination of the Court's opinion, briefly discussed below, will show that the Court did affirmatively reject the Commission's findings and held that they were without adequate evidentiary support.

### **REASONS FOR DENYING THE WRIT.**

Under the caption "Reasons for Granting the Writ", Pet. pp. 9-11, the Petitioner states, first—

"The court of appeals has significantly and improperly restricted the power of the Federal Trade

Commission under Section 5 of the Federal Trade Commission Act to deal with anticompetitive practices. Without considering the effect upon competition of the substantial market foreclosure which the Brown Shoe franchise plan caused, the court ruled that the Commission could not condemn the plan as an unfair method of competition under Section 5 because (1) under *Federal Trade Commission v. Gratz*, 253 U. S. 421, 427, such purchase plans 'have never heretofore been "regarded as opposed to good morals because characterized by deception, bad faith, fraud or oppression, or as against public policy because of their dangerous tendency unduly to hinder competition or create monopoly" \* \* \* (App. A, *infra*, p. 14a); and, because (2) in the court's view, they did not constitute tying or exclusive dealing arrangements that violated the Sherman or Clayton Acts."

and, second—

"In addition, the case warrants review in order to effectuate this Court's decision in *Brown Shoe Co. v. United States*, 370 U. S. 294."

In neither instance has the Court of Appeals decided an important question of Federal law which has not been, but should be, settled by the Supreme Court; nor decided a Federal question in a way probably in conflict with applicable decisions of the Supreme Court. Instead, the only important question of Federal law involved has been settled long since by this Court, and the decision below merely applies the principles enunciated in the controlling decisions of this Court to the facts of this particular case.

#### **Answer to Petitioner's First Reason for Granting the Writ.**

Petitioner points out (Pet. p. 3, Footnote 1a), referring to the decision of the Court reversing a Commission finding on Count II of the Complaint:

“Since that determination depended upon the substantiality of evidence to establish particular facts, review of it is not sought in this petition.”

Similarly, an examination of the opinion of the Court below reversing the Commission's finding with respect to Count I of the Complaint, will show that the Court's determination with respect to Count I of the Complaint also depended merely “upon the substantiality of evidence to establish particular facts.” We do not understand that this Court will grant certiorari merely for the purpose of reviewing decisions of Courts of Appeals with respect to the substantiality of evidence to establish particular facts.

The real difficulty with the Commission's case against the Brown Franchise Stores Program has been caused by failure of proof. In its Complaint, in Count I, the Commission charged (R. pp. 5, 6), in substance, that the agreements, written and oral, between Brown and the operators of the Brown Franchise Stores, were exclusive dealing agreements, such as are prohibited by Section 3 of the Clayton Act, and for that reason constituted unfair methods of competition under Section 5 of the Federal Trade Commission Act. The case was tried before the Hearing Examiner upon that theory. The witnesses offered by the Commission, except for three of Brown's officials who testified with respect to the details and operation of the Brown Franchise Stores Plan, consisted solely of six officials of other shoe manufacturers, competitors of Brown, who testified with respect to their difficulty in selling shoes to the operators of Brown Franchise Stores. Not a single present or former operator of a Brown Franchise Store was called as a witness by the Commission.

Brown Shoe Company offered the testimony of thirty-four present and two former operators of Brown Franchise Stores (R. pp. 291-348, 389-483, 502-668, 677-686), and the Hearing Examiner refused to accept the testimony of

additional witnesses along the same lines (R. pp. 653-5, 667-8).

In his opening statement Counsel Supporting the Complaint stated, with respect to Count I, inter alia,

“Brown has entered into a contract which requires this group of customers **to deal exclusively with them to the exclusion of all other competitors** producing and attempting to sell similar types of shoes”\* (R. 91-A).

Counsel Supporting the Complaint also stated that, after an operator had been dropped from the program

“\* \* \* the Brown Company does not then refuse to sell the franchisee shoes. They will continue to sell him shoes, but they deny him certain services which he was granted **on the condition that he deal exclusively**” (R. 91-A).

Again Counsel Supporting the Complaint stated

“The effect of this contract and Brown operations under this contract is to foreclose and exclude competitors from a substantial segment of the shoe market \* \* \* that Brown does enforce these **exclusive-dealing contracts** with approximately 700 of its customers. Without more this is a violation of the Federal Trade Commission Act, section 5” (R. 91-B).

The taking of testimony commenced on March 16, 1960 (R. p. 92), and was not completed until October 30, 1961 (R. p. 69), at which time the Hearing Examiner was still under the impression that the charge in Count II of the Complaint was under Section 5 of the Federal Trade Commission Act, but that the charge in Count I was a charge of exclusive dealing under Section 3 of the Clayton Act. Thus, when counsel for the Company said

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\* Emphasis ours here and throughout this Brief except where otherwise indicated.

“Well, I believe that inasmuch as this is a Section 5 proceeding and we are charged with some type of unfair trade practice——”

the Hearing Examiner said

“Well, a Section 5 charge is the resale price maintenance. **The other charge is under Section 3, isn't it?**” (R. 688).

As pointed out by the Court of Appeals (Pet. A, pp. 10a-11a), the Commission, finding itself unable to agree with its Hearing Examiner's findings that the Brown Franchise Stores Program was an unlawful exclusive dealing arrangement, struck such findings of the Examiner and substituted its own findings to the effect that the plan “effectively foreclosed its competitors from selling to a significant number of retail shoe stores” because the operation of such plan is “akin to the operation of tying clauses generally held as inherently anti-competitive,” and for that reason violated Section 5 of the Act (R. p. 73). In other words, the Commission could not, upon the evidence before it, find that the agreements or understandings between Brown and the operators of the Brown Franchise Stores constituted exclusive dealing agreements, as charged in Count I of the Complaint, and as Counsel Supporting the Complaint endeavored to prove. Nor could it find that they constituted tying clauses, but was reduced to finding that they effectively foreclosed competitors merely because they were “akin” to the operation of tying clauses.

Apparently the Commission found this kinship, as pointed out by the Court of Appeals (Pet. A, p. 9a), in the fact that the evidence showed that the relationship between Brown and the operators of the franchise stores was “a reasonably stable one” (R. p. 68), and because of such stability, competitors were effectively foreclosed.

It was because the Court of Appeals determined that this finding of kinship to a tying arrangement was without "adequate evidentiary basis" that the Court of Appeals reversed the Commission, and not because the Court of Appeals was undertaking to or did restrict the power of the Federal Trade Commission under Section 5 of the Federal Trade Commission Act to deal with anti-competitive practices. The decision does not restrict or limit the power of the Commission beyond holding that the Commission's findings of fact must have an adequate evidentiary basis.

Examining the opinion of the Court of Appeals, we see that it stated (Pet. A, p. 2a):

"The Commission alleged that the 'purpose, intent or effect' of such practices on the part of Brown was 'substantially to lessen, hinder, restrain and suppress competition' in the distribution of shoes in interstate commerce and in general to '**foreclose**' or '**exclude**' competitors from a 'substantial share' of the retail dealer market, thereby further enhancing the already powerful competitive position of Brown in the shoe industry."

The Court of Appeals then pointed out (Pet. A, p. 9a), that the essence of the Commission's decision with respect to Count I of the Complaint was as follows:

"In sum, the Commission held that petitioner's operation of its franchise program, which it found **effectively foreclosed competitors** from making substantial sales to a significant number of desirable retail outlets, constituted an unfair trade practice in violation of § 5 of the Federal Trade Commission Act."

Noting the theory upon which the Commission tried the case, as indicated above, the Court of Appeals said (Pet. A, p. 10a):



“When this case was first instituted on October 13, 1959, it obviously was the theory of the Federal Trade Commission that Brown’s franchise stores program was an unlawful **exclusive dealing arrangement** violative of § 5 of the Act. It was so found by the Hearing Examiner and decided by him on that basis.”

The Court of Appeals then pointed out that the Commission refused to go along with the Hearing Examiner, saying (Pet. A, pp. 10a-11a):

“The Commission struck such findings of the Examiner, stating:

“ ‘In short, from our review of the record, we find that respondent’s operation of the franchise plan, which has effectively foreclosed its competitors from selling to a significant number of retail shoe stores, constitutes an unfair trade practice under Section 5 of the Federal Trade Commission Act. Respondent’s practice of conditioning the benefits of membership in the plan to adherence to the restrictive terms of the franchise agreement for the purpose of foreclosing other manufacturers from selling to its franchisees is akin to the operation of tying clauses generally held as inherently anti-competitive.’ ”

Having reviewed, at some length, the pleadings, the evidence, the Examiner’s decision, and the Commission’s findings, and having cited this Court’s decision in the case of *Federal Trade Commission v. Raladam Co.*, 283 U. S. 643, 647, with respect to the purpose of the Federal Trade Commission Act, the Court of Appeals expressly stated that the primary question with which it was concerned was merely the adequacy of the evidence to support the Commission’s findings, saying (Pet. A, p. 11a):

“Our primary question is whether there was adequate evidentiary basis for the Commission’s finding that the Brown franchise program was an unfair method of competition and accordingly unlawful under § 5 of the Act.”

Then, before undertaking to examine the evidence, the Court of Appeals, further emphasizing its opinion that its primary concern was with the adequacy of such evidence, pointed out that the Act itself provides, 15 U. S. C. A. § 45 (c), that the findings of the Commission as to the facts, if supported by evidence, shall be conclusive; and quoted (Pet. A, p. 12a) from the opinion of this Court in the case of *Universal Camera Corp. v. N. L. R. B.*, 340 U. S. 474, 488, where it was held that a reviewing Court may set aside a Board decision,

“when it cannot conscientiously find that the evidence supporting that decision is substantial, when viewed in the light that the record in its entirety furnishes, including the body of evidence opposed to the Board’s view.”

Having thus defined the question with which the Court of Appeals was concerned as being one with respect to the adequacy of the evidence, and having indicated its recognition of the limitations of a reviewing Court in passing upon the adequacy or substantiality of the evidence, the Court of Appeals proceeded to review such evidence, and after having done so concluded (Pet. A, p. 21a):

“We hold that the Brown franchise stores program was not an unlawful tying arrangement and that there was a complete failure to prove an exclusive dealing agreement which might be held violative of § 5 of the Act.”

In the course of such review the Court of Appeals pointed out that historically the validity of such pro-

grams had never been challenged, saying (Pet. A. pp. 13a-14a):

“What Brown did in the operation of its Brown franchise stores program it had been doing for at least thirty years prior to the institution of this proceeding. Similar programs are operated by its competitors, such as International Shoe Company’s Merchants Service Plan and General Shoe Company’s General Shoes Friendly Franchise Store Plan. No Court has gone so far as to hold like programs or methods of doing business unlawful under § 5 of the Federal Trade Commission Act and such programs or sales methods have never heretofore been ‘\* \* \* regarded as opposed to good morals because characterized by deception, bad faith, fraud, or oppression, or as against public policy because of their dangerous tendency unduly to hinder competition or create monopoly.’ 253 U. S. at page 427.”

Petitioner asserts, (Pet. pp. 11-12), that in making this statement with respect to the long established practice in the shoe industry the Court of Appeals relied upon the case of *Federal Trade Commission v. Gratz*, 253 U. S. 421, and ignored this Court’s post-*Gratz* decisions, such as *Federal Trade Commission v. Cement Institute*, 333 U. S. 683; *Federal Trade Commission v. Motion Picture Adv. Serv. Co.*, 344 U. S. 392; *Federal Trade Commission v. Keppel & Bro.*, 291 U. S. 304; *Fashion Originators’ Guild v. Federal Trade Commission*, 312 U. S. 457; and *Federal Trade Commission v. Bunte Bros.*, 312 U. S. 349. But the Court of Appeals did not rely upon *Gratz* beyond pointing out that the Brown Franchise Plan met the test of *Gratz*. However, having so held, the Court of Appeals went on to examine the evidence and to point out the complete absence of any market foreclosure of Brown’s competitors other than that resulting from the fact that the operators of the Brown Franchise Stores, though free to leave the

program at any time, voluntarily remain on the program because it helps to make them successful and profitable operators. Thus the Court of Appeals said (Pet. A, p. 15a):

“Retailers were free to abandon the arrangement at any time they saw it to their advantage so to do.”

(Pet. A, pp. 17a-18a):

“In Brown there was no ‘sale’ of the **tying** product (franchise services); there is no evidence that Brown’s ‘power or leverage’ in the tying product was such as to force the purchase of the ‘tied products’ (shoes). This case presents a situation where the seller, Brown, has no control or dominance over the tying product, services; consequently, the Brown franchise program is not an ‘effectual weapon’ to pressure buyers into taking the tied item, shoes.”

(Pet. A, p. 19a):

“Brown’s franchise program was not the only program available to retailers. It did not give Brown the economic leverage to force the sale of its shoes. \* \* \* There is nothing specialized or unique about the services offered by Brown.”

(Pet. A, p. 19a):

“Brown has not ‘acquired’ the retail outlets of those who join its program. The latter are free to leave it at any time.”

As for the post-*Gratz* decisions, in *Cement Institute* it was contended that the Commission did not have jurisdiction under Section 5 of the Federal Trade Commission Act because the acts complained of violated Section 1 of the Sherman Act. This Court rejected such contention.

In *Motion Picture Adv. Serv. Co.* it was contended that exclusive dealing contracts (which would violate

Section 3 of the Clayton Act) were not within the coverage of Section 5 of the Federal Trade Commission Act. This Court rejected such contention.

In *Keppel & Bro.*, a "lottery or gambling device which encourages gambling among children" was held to come within the coverage of Section 5 of the Federal Trade Commission Act.

In *Fashion Originators' Guild* a combination of manufacturers who sold their products under exclusive dealing agreements which violated Section 3 of the Clayton Act was held to come within the scope of Section 5 of the Federal Trade Commission Act.

In *Bunte Bros.*, Section 5 of the Federal Trade Commission Act was held to be inapplicable to purely intra-state transactions.

In all of such decisions this Court pointed out that the term unfair competition is a flexible concept, not precisely defined by the statute, but to be defined with particularity by the Courts in the many cases coming before them. There is nothing in the decision of the Court of Appeals in the present case in conflict with any of such post-*Gratz* cases.

Since the decision of the Court of Appeals was merely a decision that there was not an adequate evidentiary basis to support a finding of the Commission, the statement of Mr. Justice Holmes in the case of *United States v. Johnston*, 268 U. S. 220, 227, that "We do not grant a certiorari to review evidence and discuss specific facts" would appear to be particularly applicable to the petition now before this Court.

Again this Court said, in *General Pictures Co. v. Electric Co.*, 304 U. S. 175, l. c. 178:

"Granting of the writ would not be warranted merely to review the evidence or inferences drawn from it."

See also *Ferguson v. Moore-McCormack Lines*, 352 U. S. 521, 537 (dissenting opinion by Mr. Justice Frankfurter) and cases cited therein.

**Answer to Petitioner's Second Reason for  
Granting the Writ.**

A complete answer to Petitioner's assertion that "the case warrants review in order to effectuate this Court's decision in *Brown Shoe Co. v. United States*" (Pet. p. 11), is the fact that the divestiture by Brown of the Kinney Stores, so ordered by this Court, has long since been carried out.

In this connection Petitioner asserts (Pet. pp. 15-16), that this Court in *Brown Shoe Co., Inc. v. United States*, 370 U. S. 294, concluded that "in light of the structure of the shoe industry which demonstrates a definite trend toward vertical integration, the preemption by Brown of several hundred retail dealers as its exclusive dealers tends substantially to lessen competition."

The fact is that this Court did no such thing. In *Brown Shoe* this Court was examining into the probable effect upon competition in the shoe industry of the "acquisition" by Brown of the Kinney stores. In making such examination this Court took into consideration as one of the elements of such competition the relationship between Brown and the operators of the Brown Franchise Stores, and held that, l. c. 338, Footnote 66:

"Brown was able to exercise sufficient control over these stores \* \* \* to warrant their characterization as 'Brown' outlets for the purpose of measuring the share and effect of Brown's competition at the retail level."

But this Court did not hold, or even intimate, that the operation of the Brown Franchise Stores Program consti-

tuted an unfair method of competition, or was otherwise illegal; or even, as stated by petitioner, that Brown had preempted such operators as its exclusive dealers. The issue as to the legality or illegality of the Brown Franchise Stores Program was not tried in the District Court, was not before this Court, and was not decided in *Brown Shoe*.

In the present case, where the issue was before the Court of Appeals, the Court of Appeals has expressly found, upon the evidence, that there was no preemption of the market because the operators were free to leave the program at any time, and that the operators were not Brown's exclusive dealers. As the Court of Appeals said (Pet. A, p. 19a):

"The only similarity between this case and the previous Brown Shoe Co. decision, *supra*, is the fact that the same corporation is involved in both disputes."

#### CONCLUSION.

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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June, 1965.



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# **In the Supreme Court of the United States**

**OCTOBER TERM, 1965**

**No. 118**

**FEDERAL TRADE COMMISSION, PETITIONER**

**v.**

**BROWN SHOE COMPANY, INC.**

**ON WRIT OF CERTIORARI TO THE UNITED STATES COURT  
OF APPEALS FOR THE EIGHTH CIRCUIT**

**BRIEF FOR THE FEDERAL TRADE COMMISSION**

## **OPINIONS BELOW**

The opinion of the court of appeals (R. 574-591) is reported at 339 F. 2d 45. The opinion of the Federal Trade Commission (R. 48-84) is not yet reported.

## **JURISDICTION**

The judgment of the court of appeals was entered on December 8, 1964 (R. 592). On March 8, 1965, Mr. Justice White extended the time for filing a petition for a writ of certiorari to and including May 7, 1965. The petition for a writ of certiorari was filed on that date, and was granted on October 11, 1965 (R. 594; 382 U.S. 808). This Court has jurisdiction under 28 U.S.C. 1254(1).

## **QUESTION PRESENTED**

Pursuant to the "Franchise Stores Program" of the Brown Shoe Company, more than 700 independent

retail shoe stores agreed, in return for a number of services and benefits, to carry no line of shoes conflicting with Brown Shoe brands. The Federal Trade Commission held the "Franchise Stores Program" to be an unfair method of competition under Section 5 of the Federal Trade Commission Act, finding that the plan "effectively foreclosed \* \* \* [Brown's] competitors from selling to a significant number of retail shoe stores." The question presented is whether the court of appeals erred in reversing the Commission's decision on the grounds that the Brown plan did not involve sales methods which have "heretofore been \* \* \* regarded as opposed to good morals because characterized by deception, bad faith, fraud or oppression, or as against public policy because of their dangerous tendency unduly to hinder competition or create monopoly'" (*Federal Trade Commission v. Gratz*, 253 U.S. 421, 427), and that the Commission had not shown the plan to be unlawful as either a tying arrangement or an exclusive dealing agreement.

#### STATUTES INVOLVED

Section 5(a) of the Federal Trade Commission Act, 38 Stat. 717, 719, as amended, 15 U.S.C. 45(a), provides in pertinent part:

- (a)(1) Unfair methods of competition in commerce, and unfair or deceptive acts or practices in commerce, are declared unlawful.

\* \* \* \* \*

- (6) The Commission is empowered and directed to prevent persons, partnerships,

or corporations \* \* \* from using unfair methods of competition in commerce and unfair or deceptive acts or practices in commerce.

Section 3 of the Clayton Act, 38 Stat. 731, 15 U.S.C. 14, provides:

It shall be unlawful for any person engaged in commerce, in the course of such commerce, to lease or make a sale or contract for sale of goods, wares, merchandise, machinery, supplies or other commodities, whether patented or unpatented, for use, consumption or resale within the United States or any Territory thereof or the District of Columbia or any insular possession or other place under the jurisdiction of the United States, or fix a price charged therefor, or discount from, or rebate upon, such price, on the condition, agreement or understanding that the lessee or purchaser thereof shall not use or deal in the goods, wares, merchandise, machinery, supplies or other commodities of a competitor or competitors of the lessor or seller, where the effect of such lease, sale, or contract for sale or such condition, agreement or understanding may be to substantially lessen competition or tend to create a monopoly in any line of commerce.

#### STATEMENT

The court of appeals set aside an order of the Federal Trade Commission (R. 37, 46-47) prohibiting the Brown Shoe Company, Inc. ("Brown") from entering into or maintaining agreements with independent shoe retailers, or from imposing conditions upon such retailers, which have the purpose or effect of inter-

fering with retailers' independent determination whether to purchase shoes from Brown's competitors.<sup>1</sup> The proceeding before the Commission was instituted by a complaint (R. 1-6) issued on October 13, 1959, charging Brown with unfair methods of competition in violation of Section 5 of the Federal Trade Commission Act. Following extensive administrative proceedings, the Commission, on February 20, 1963, issued its opinion and final order (R. 46-47, 48-84).

#### 1. THE FACTS

Much of the relevant evidence is undisputed. The Commission found the following facts:

##### A. BROWN'S FRANCHISE PROGRAM

In 1959, Brown was the country's second largest manufacturer of shoes in terms of dollar volume (R. 71) and the third largest in terms of pairs of shoes produced (*ibid*). It produces leather shoes of almost every type for men, women, and children, within the range categorized broadly as "medium priced" (R. 42). In addition to marketing its shoes through mail order houses and a substantial number of company-owned retail stores, Brown distributed shoes through approximately 6,000 independent retail shoe stores (R. 17). More than 700 of these stores participate in the "Brown Franchise Stores Program" (R. 19). Under this program, Brown offers a "package" of benefits and services, including "architectural plans,

<sup>1</sup> The court also reversed a Commission finding that Brown Shoe attempted to fix and maintain the retail prices at which its franchisees would sell Brown products (R. 74-82). Since that determination depended upon the substantiality of evidence to establish particular facts, the Commission has not sought review thereof.



service of a field representative, merchandising records, retail sales training program, accounting system, national and regional meetings, and group purchasing of insurance, rubber footwear, and display material" (R. 60, n. 17) in return for a promise (either written or oral) that the retailer will (R. 51):

\*\*\*[c]oncentrate my business within the grades and price lines of shoes representing Brown Shoe Company Franchises of the Brown Division *and will have no lines conflicting with Brown Division Brands of the Brown Shoe Company.* [Emphasis added.]

The services provided under the franchise plan are valuable. For example, Brown's architectural department draws plans, at the request of a franchisee, either for designing a new store or for redesigning an old one, "complete from the ground up and from the sidewalk to the rear door" (R. 109). Over the years, approximately 50 percent of the Brown franchise accounts have used this service (R. 110).

Brown's field representatives call upon franchise dealers regularly, giving advice regarding proper methods of merchandising, record-keeping, personnel administration, advertising and sales promotions, and "other matters pertinent to a profitable shoe business" (R. 13). Field men also assist franchisees in checking inventories, "in making out a seasonal buying and sales plan," and in performing end-of-the-year inventory and audits (R. 111). Franchisees are also given the opportunity to attend regional meetings and national conventions, where dealers exchange ideas for operating their businesses "more efficiently and profitably" (R. 622).



The group insurance which is available to franchise dealers—including life, fire, public liability, burglary, and business operation insurance—is, according to Brown, substantially cheaper than that which the retailers could purchase locally (R. 116); many franchise dealers testified that they take advantage of the insurance and regard it as a valuable benefit (e.g., R. 278-279, 363). Franchisees also enjoy substantial discounts on canvas and waterproof footwear manufactured by U.S. Rubber Company (R. 21).

The Commission found that this set of benefits and services provides the "prime motivation" for dealers joining and continuing to participate in the franchise program. Although not every dealer takes advantage of each benefit, the Commission found that "collectively" these benefits achieved the intended effect of attracting retailers to the program and inducing them to comply with its restrictions (R. 60-61). The franchise agreement is terminable by either party upon 30 days' notice, but the Commission found that in actual operation "the relationship between Brown and its franchisees is a reasonably stable one" (R. 63).<sup>2</sup>

<sup>2</sup> In *Brown Shoe Co. v. United States*, 370 U.S. 294, 338, n. 66, this Court, in discussing the same franchise program, stated: "Since the retailer was required, under this plan, to invest his own resources and develop his good will to a substantial extent in the sale of Brown products, the flow of which Brown could readily terminate, Brown was able to exercise sufficient control over these stores and departments to warrant their characterization as 'Brown' outlets for the purpose of measuring the share and effect of Brown's competition at the retail level. Cf. *Standard Oil Co. of California v. United States*, 337 U.S. 293."

## B. EFFECT OF THE RESTRICTIVE PROVISIONS

Although Brown contended before the Commission that the explicit restriction in the franchise agreement that its retailers not handle conflicting lines is ignored in practice, the Commission found that Brown in fact enforces the provision. The franchise agreements are policed by a team of field men whose report forms bore for a period of time the printed legend: "Encourage concentration on B.S.C. lines and elimination of conflicting lines" (R. 54). The record contains much documentary evidence that the field men followed their instructions and regularly discouraged the purchase, or urged the elimination, of other manufacturers' lines which conflicted with the Brown lines (R. 53-54, 691-722).<sup>3</sup>

<sup>3</sup>The Commission's opinion quoted the following excerpts from field reports\* and correspondence between field men and headquarters Franchise Division personnel:

"He has been urging us to allow him to carry 'Town and Country' which are profitable for him in Willimantic and has been refused. I am leaving Risque in as a cushion for this problem. Time will have to settle that problem." (R. 52-53—Brown Franchise Division Inter-Company Correspondence—McEmery to Lou Carrol, dated February 4, 1957, regarding Prague Shoe Company, New London, Conn.)

"Outside lines were discussed and she also agrees that most are not necessary and will be discontinued. This will eliminate many over-lapping patterns and types that she does not need in this low-volume store." (R. 53—Report of field man Bob Taylor to Tom Curtis regarding White's Shoe Store, Lancaster, New Hampshire, July 19, 1958.)

"I think it is time for a forthright discussion with Mr. Bump on what we attempt to accomplish with dealers who operate their business on our Franchise Program. If he does not see the wisdom of going along with the thought of operating these stores more progressively, avoid directly conflicting purchases, then I think we have no other alternative than to

Brown generally permits its franchisees to remain in the plan (and thus receive its benefits) even if they carry short or specialty lines which only partially "conflict" with its own brands (R. 27-28). If, however, a franchisee refuses to discontinue a major conflicting line, he may be dropped from the franchise plan (R. 54-55). (Non-franchise dealers can purchase shoes from Brown, but they do not receive most of the benefits offered under the plan to franchised dealers.) During the years 1949 through 1955, Brown Shoe dropped 22 stores from the franchise program for "persist[ing] in carrying conflicting lines" (R. 55) and from November 1954 to April 1958, a dozen or more dealers were similarly dropped (R. 24-25).

The Commission found that, on the whole, Brown is successful in getting its franchisees to exclude competing lines (R. 63). On the average, franchised stores purchase 75 percent of their total shoe requirements from Brown, with most of the remainder consisting of shoes of higher or lower price than those available from Brown—i.e., shoes which do not constitute "conflicting" lines within the meaning of the agreement (*ibid*).

The evidence showed the effect of the Brown franchise plan in foreclosing retail outlets to Brown's competitors—particularly small manufacturers. Thus, the Leverenz Shoe Company (a firm not among the top 70 (R. 740)), sold one retailer \$2,399.12 worth

ask him to withdraw from the program." (R. 53—Letter to field man T. R. Forgan from Dick Johnston, Manager of the Brown Franchise Stores Division, dated February 18, 1958, regarding Lloyd's Shoes, Wichita and Great Bend, Kansas.)

of shoes in 95 but lost the account altogether in 1957 when the retailer became a Brown franchisee (R. 65). Similarly, the Weyenberg Shoe Co. (the 46th largest manufacturer in the country in terms of output (R. 740)) saw sales to two of its accounts drop from \$8,388 to \$186.00 and from \$2,782 to zero, respectively, when the dealers joined the Brown franchise program and agreed to drop conflicting lines (R. 65). And the Juvenile Shoe Corporation (ranked 60th in pairage output (R. 740)), which had formerly sold as many as 1,530 pairs of shoes annually to a shoe store in Plymouth, Michigan, suffered a decline to only 188 pairs following the store's enrollment in the Brown plan (R. 65). Several of Brown's competitors testified that they no longer made any serious effort to sell Brown franchised stores because they felt it would be a waste of time (R. 73).

## 2. THE COMMISSION'S DECISION

The Commission affirmed the examiner's findings (R. 15-30) that, as a result of Brown Shoe's franchise plan, its "competitors are foreclosed from selling to the market represented by the franchise dealers" (R. 63). The Commission found that (R. 66):

\* \* \* whatever a dealer's reasons may have been for entering the program, once he became a participant he was subject to the agreement or understanding requiring him to refrain from purchasing a competitor's conflicting lines and to concentrate on respondent's products. The record is plain that whatever the merit of its products, respondent added to its

competitive arsenal the franchise plan embodying restrictions, which necessarily foreclosed competitors from effectively selling to the select group of retailers under that program.

The Commission concluded that "the franchise plan was a major factor in foreclosing markets to competitors of respondents" (R. 62) and that it therefore "constitutes an unfair trade practice under Section 5 of the Federal Trade Commission Act" (R. 68).<sup>4</sup>

Although the Commission rejected the argument that, in a proceeding under Section 5 of the Federal Trade Commission Act challenging a trade practice primarily on the ground that it unduly forecloses competitors, the Commission must apply the precise test applicable to requirements contracts under Section 3 of the Clayton Act, it concluded (R. 70), after a full canvass of the structure of the shoe industry, its developing trend toward concentration, and Brown's role in that trend, particularly as shown by this Court's decision in *Brown Shoe Co. v. United States*, 370 U.S. 294, "that the prospective competitive impact of the franchise program is such that the standards of illegality under Section 3 and Section 7 of the Clayton Act, as amended, have been met." In summary, the Commission found (R. 74) that "[t]o foster the competitive position of the smaller manufacturers,

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<sup>4</sup> It also observed (R. 68): "\* \* \* [t]he practice of conditioning the benefits of membership in the plan to adherence to the restrictive terms of the franchise agreement for the purpose of foreclosing other manufacturers from selling to its franchisees is akin to the operation of tying clauses generally held as inherently anticompetitive."

Brown should be prohibited from entering into arrangements with its customers interfering with the latter's independent judgment in making purchasing decisions." Commissioner Elman concurred in this decision on the ground that the "exclusive vertical arrangements shown by the record have the requisite competitive effects \* \* \*" (R. 83-84).

### 3. THE COURT OF APPEALS' DECISION

The court of appeals reversed the Commission's decision and directed dismissal of the complaint. Relying on *Federal Trade Commission v. Gratz*, 253 U.S. 421, 427, the court ruled that the Brown franchise program "could [not] possibly be classified as an 'unfair method of competition'." Noting that Brown, International Shoe Company (the nation's leading manufacturer of shoes (R. 741)), and Genesco (the nation's third leading shoe producer (*ibid.*)) have operated such programs for a number of years, it stated that "[n]o court has gone so far as to hold like programs or methods of doing business unlawful under Section 5 of the Federal Trade Commission Act and such programs or sales methods have never heretofore been \* \* \* regarded as opposed to good morals because characterized by deception, bad faith, fraud, or oppression, or as against public policy because of their dangerous tendency unduly to hinder competition or create monopoly'." The court went on to hold in some detail that Brown Shoe's franchise program did not constitute an illegal tying arrangement under the Sherman Act or Section 3 of the Clayton Act. Without any elaboration or explana-



tion the court also stated that "there was a complete failure to prove an exclusive dealing agreement which might be held violative of § 5 \* \* \*". Finally, the court found this Court's decision in *Brown Shoe Co. v. United States*, *supra*, wholly irrelevant.

#### SUMMARY OF ARGUMENT

The Brown Shoe Company operates a franchise plan under which independent retailers receive valuable benefits and services in exchange for their express promise not to handle shoes which compete with lines manufactured by Brown. The Federal Trade Commission found that the plan was unfair because the restrictive agreement foreclosed Brown's competitors and threatened a substantial lessening of competition in the shoe industry which, as demonstrated in *Brown Shoe Co. v. United States*, 370 U.S. 294, has already shown a marked trend toward concentration and vertical integration. It issued a cease and desist order against the plan. The court of appeals set the order aside under *Federal Trade Commission v. Gratz*, 253 U.S. 421, on the ground that plans like Brown's have not heretofore been held by the courts to be immoral or anticompetitive. It did not consider the plan's effect in foreclosing competition and it treated *Brown Shoe Co. v. United States*, *supra*, as irrelevant.

Section 5 of the Federal Trade Commission Act is a broad and flexible grant of authority to the Commission to stop in their incipency trade practices which threaten to restrain competition. In giving content



to the proscription in Section 5 of "unfair methods of competition" the Commission is guided by the substantive provisions of the antitrust laws but it is not restricted to a mechanical application of those provisions. The narrower standard suggested by *Federal Trade Commission v. Gratz*, 253 U.S. 421, 427, was disapproved by this Court in *Federal Trade Commission v. Keppel & Bro.*, 291 U.S. 304, 309-310.

The practice involved here foreclosed to Brown's competitors a substantial number of retail outlets by what is in effect an exclusive dealing arrangement of the kind condemned under Section 3 of the Clayton Act. Whether or not Brown's arrangement falls within the precise terms of Section 3, it can properly be reached under Section 5, which covers not only recognized antitrust violations, but conduct which bears the characteristics of such violations. *Atlantic Rfg. Co. v. Federal Trade Commission*, 381 U.S. 357. Although the Commission found that the Brown plan clearly had such characteristics and was in effect an exclusionary arrangement condemned under the antitrust laws, the court of appeals treated the plan as an inherently lawful arrangement which could under no circumstances be reached under Section 5. In doing so, the court of appeals misconceived Section 5 and disregarded the Commission's analysis of the plan's operation and effect.

In light of the history and structure of the shoe industry, the extent of the foreclosure effected by Brown's franchise program, and the absence of any eco-

nomie justification for such foreclosure, the Commission properly found that the program met the standards of illegality of Section 3 of the Clayton Act. Brown's franchise program has preempted some 766 choice retail outlets to which Brown sold more than \$24,000,000 worth of shoes in 1959. Those 766 stores constitute approximately 1 percent of the retail shoe stores in the country. However, the Commission held that, while the percentage of the market foreclosed is important, it will seldom be determinative. Reviewing the relevant economic and historical factors, which the court of appeals completely ignored, the Commission concluded, as had this Court before it in *Brown Shoe, supra*, that in light of the structure of the shoe industry which demonstrates marked trends toward concentration and vertical integration, the preemption by Brown of several hundred retail stores as its exclusive dealers tends substantially to lessen competition.

Moreover, the restrictive agreements which Brown has solicited and enforced appear to be wholly devoid of any redeeming economic justification. The services and benefits Brown offers can be furnished as well without the exaction of an exclusionary agreement which forecloses competition. The restrictive agreement is not needed to assure the retailer a source of supply, and it does not commit Brown with respect to price. Brown is not a new company which might require such an agreement to enter the market. The restrictive agreement clearly serves no purpose except to suppress competition and is thus, as the

Commission found, akin to the operation of tying clauses, which are inherently anti-competitive.

Because the franchise program clearly appears as the growing edge of a continuous drive toward the foreclosure of retail outlets by an increasingly concentrated group of manufacturers, the very result proscribed by the Court in *Brown Shoe, supra*, and because it is totally lacking in economic justification, the Commission was justified in condemning it as an unfair method of competition.

#### ARGUMENT

I. THE BROWN FRANCHISE PLAN INVOLVES A MARKET FORECLOSURE OF THE TYPE PROSCRIBED BY SECTION 3 OF THE CLAYTON ACT WHICH THE FEDERAL TRADE COMMISSION COULD PROPERLY REACH UNDER SECTION 5 OF THE FEDERAL TRADE COMMISSION ACT

A. THE COURT OF APPEALS FAILED TO RECOGNIZE THE SCOPE OF THE COMMISSION'S AUTHORITY UNDER SECTION 5 TO FORESTALL PRACTICES RESULTING IN COMPETITIVE EFFECTS PROSCRIBED BY SECTION 3

Without considering the probable effect upon competition of the substantial market foreclosure resulting from the Brown Shoe franchise plan, the court of appeals held that the Commission could not condemn the plan as an unfair method of competition under Section 5 of the Federal Trade Commission Act because, under *Federal Trade Commission v. Gratz*, 253 U.S. 421, 427, such plans "have never heretofore been 'regarded as opposed to good morals because characterized by deception, bad faith, fraud or oppression, or as against public policy because of their dangerous tendency un-

duly to hinder competition or create monopoly' \* \* \* (R. 585). The decision reflects an erroneously narrow reading of the reach of Section 5.

Section 5 is a broad and flexible provision whose implementation by the Commission depends upon the particular circumstances in which the practice questioned is employed. It reaches every trade practice which significantly restrains competition or threatens such a restraint if permitted to grow beyond its incipient stages. It was intended "to supplement and bolster the Sherman Act and the Clayton Act \* \* \* to stop in their incipiency acts and practices which, when full blown, would violate those acts \* \* \* as well as to condemn as 'unfair methods of competition' existing violations of them." *Federal Trade Commission v. Motion Picture Adv. Serv. Co.*, 344 U.S. 392, 394-395; *Federal Trade Commission v. Cement Institute*, 333 U.S. 683, 691; *Federal Trade Commission v. Keppel & Bro.*, 291 U.S. 304, 309-310.

That congressional purpose could not be achieved if the Commission could prohibit under Section 5 only those practices which earlier court decisions had condemned as immoral or anti-competitive. It was in recognition of this fact that this Court in *Keppel, supra*, after a careful review of the legislative history of the Act, disapproved the approach taken in *Gratz*, and other early decisions which had failed to give sufficient weight to the legislative purpose underlying the statute.<sup>5</sup> Thus this Court has rejected the limited

<sup>5</sup> See *Federal Trade Commission v. Beech-Nut Packing Co.*, 257 U.S. 441, 453; *Federal Trade Commission v. Raladam Co.*, 283 U.S. 643, 652; *Federal Trade Commission v. Royal Milling Co.*, 288 U.S. 212, 217.

interpretation of the reach of Section 5 which was the basis of the court of appeals decision.

In giving content to the generalized language of Section 5, the Commission has used recognized violations of the antitrust laws as a guideline. But it is not limited to "a mechanical application" of the Sherman and Clayton Acts. *Atlantic Rfg. Co. v. Federal Trade Commission*, 381 U.S. 357, 369-370. Section 5 reaches not only recognized antitrust violations, but also conduct which bears "the characteristics" of such violations (*ibid.*). The more constricted interpretation adopted by the court of appeals renders Section 5 largely redundant and rejects the congressional perception that "there is no limit to business ingenuity and legal gymnastics" (*id.* at 367).

The court of appeals did not disturb the Commission's findings as to the anticompetitive effect of Brown's franchise plan, and it therefore seems undeniable that the plan entailed a restrictive vertical arrangement which foreclosed to Brown's competitors a substantial number of retail outlets. Such foreclosure of outlets to competitors is the kind of restraint that Section 3 of the Clayton Act condemns (see pp. 18-21, *infra*). Since the use of Section 5 to challenge exclusive vertical arrangements which might not conform to the precise patterns outlined in Section 3 has previously been sanctioned by the Court (*Atlantic Rfg. Co. v. Federal Trade Commission*, 381 U.S. 357; cf., *Federal Trade Commission v. Motion Picture Adv. Serv. Co.*, 344 U.S. 392), the Commission was certainly free to proceed under Section 5 even if

the plan did not fall precisely within the terms of Section 3.

B. BROWN'S EXCLUSIONARY ARRANGEMENT IS THE TYPE OF  
AGREEMENT PROSCRIBED BY SECTION 3

The court of appeals held that "there was a complete failure to prove an exclusive dealing agreement which *might* be held violative of §5" (R. 591; emphasis added). It reached this conclusion without any discussion or explanation, and its meaning is not entirely clear. If the court meant that there was no evidence of an exclusionary agreement, it failed to understand the significance of the undertaking by each franchisee to carry "no lines conflicting with Brown Division Brands of the Brown Shoe Company" (R. 580). There is no real dispute as to the meaning of that undertaking; it obligated retailers not to purchase types and grades of shoes manufactured by Brown from manufacturers other than Brown. The Commission was certainly justified in observing (R. 51) that "[t]he proviso on its face restricts franchisees as to the purchases they may make from competitors of Brown." The Commission found that in practice the agreement resulted in the preemption by Brown of 75 percent of the requirements of its franchised dealers. It thus seems undeniable that, as to the types and grades of shoes it produced, Brown obtained exclusive dealing agreements with its retailers.

If, on the other hand, the court of appeals meant that the agreement which was proved was one which under no set of surrounding circumstances could be held unlawful, the court was plainly in error. Such



a view would naturally lead the court to find, as it apparently found, that it was completely unnecessary to consider the historical and economic factors which the Commission thought to be decisive. Indeed, the court of appeals did not reject the Commission's finding that by operation of its franchise plan Brown "has effectively foreclosed its competitors from selling to a significant number of retail shoe stores." (R. 68).

Of course, the Commission's opinion was concerned with "the impact of the particular practice on competition, not the label that it carries" (*Federal Trade Commission v. Motion Picture Adv. Serv. Co.*, at 397), and its analysis of the facts was primarily directed to the effect of the plan in foreclosing competition. Exclusionary arrangements fall under Section 5 of the Federal Trade Commission Act if they violate the policies of the Sherman Act (*Federal Trade Commission v. Motion Picture Adv. Serv. Co.*, *supra*), or Section 3 of the Clayton Act (*Fashion Originators' Guild v. Federal Trade Commission*, 312 U.S. 457). Thus, in *Atlantic Rfg. Co. v. Federal Trade Commission*, *supra*, conduct having consequences proscribed by Section 3 of the Clayton Act but not precisely within the bounds of that section was nevertheless held to violate Section 5.

An exclusive dealing arrangement is a contract under which a purchaser agrees not to use or deal in the merchandise of his seller's competitors. See *Standard Fashion Co. v. Magrane-Houston Co.*, 258 U.S. 346; *Fashion Originators' Guild v. Federal Trade Commission*, *supra*; *Federal Trade Commission v. Motion Picture Adv. Serv. Co.*, *supra*; *Standard Oil Co.*



of *California v. United States*, 337 U.S. 293; *Tampa Electric Co. v. Nashville Coal Co.*, 365 U.S. 320, 327. Even if the Brown plan does not fall within the literal language of Section 3, it nevertheless falls clearly within the policy of Section 3, for services are furnished to retailers only upon the condition or understanding that they will not handle the shoes of Brown's competitors.

The services and benefits furnished by Brown are not, as the court of appeals assumed (R. 591), some kind of "free" premium customarily furnished retailers. They are the consideration for an express promise to foreclose competitors, and they represent a considerable value to the retailer, who might otherwise have to pay for them—without assistance from Brown (and without foreclosure of Brown's competitors).

All this was plainly disclosed in the Commission's analysis of the restrictive aspects of the agreement and the actual foreclosure of competition resulting from its use. From its review of the evidence the Commission concluded (R. 63):

The foregoing summary of the facts establishing that *conflicting lines of competitors are excluded by virtue of the enforcement of the terms of the restrictive proviso in the franchise agreement*, and that such enforcement of the proviso was substantially effective, is sufficient to support the examiner's finding that respondent's competitors are foreclosed from selling to the market represented by the franchise dealers. [Emphasis added.]

With respect to respondent's contention that retailers' adherence to the plan was purely voluntary, the Commission found (R. 66):

\* \* \* [W]hatever a dealer's reasons may have been for entering the program, once he became a participant he was subject to the agreement or understanding requiring him to refrain from purchasing a competitor's conflicting lines and to concentrate on respondent's products. The record is plain that whatever the merit of its products, respondent added to its competitive arsenal the franchise plan embodying restrictions, which necessarily foreclosed competitors from selling to the select group of retailers under that program.

Thus the Commission's conclusion that the franchise plan is an unfair method of competition under Section 5 of the Act rested squarely upon "[r]espondent's practice of conditioning the benefits of membership in the plan to adherence to the restrictive terms of the franchise agreement for the purpose of foreclosing other manufacturers from selling to its franchisees \* \* \*" (R. 68).

II. IN LIGHT OF THE HISTORY AND STRUCTURE OF THE SHOE INDUSTRY, THE EXTENT OF THE FORECLOSURE EFFECTED BY BROWN'S FRANCHISE PROGRAM, AND THE ABSENCE OF ANY ECONOMIC JUSTIFICATION FOR SUCH FORECLOSURE, THE COMMISSION PROPERLY FOUND THAT THE PROGRAM VIOLATED THE POLICY OF SECTION 3 OF THE CLAYTON ACT

We have shown above that the agreement by Brown's franchised dealers not to carry lines "conflicting" with Brown's shoes is the type of vertical

arrangement to which Congress addressed itself in Section 3 of the Clayton Act. Whether or not the franchise program violated the standards of Section 3 in all respects, the Commission found that "the *prospective competitive impact* of the franchise program is such that the standards of illegality under Section 3 \* \* \* have been met" (R. 70, emphasis added). The remaining question is whether that finding "has 'warrant in the record' and a reasonable basis in law." *Atlantic Rfg. Co. v. Federal Trade Commission*, 381 U.S. 357, 367. The record before the Commission, including the decision of this Court in *Brown Shoe Co. v. United States*, 370 U.S. 294, revealed (a) that the industry had experienced a history of progressive concentration and foreclosure in which Brown was a leading force, (b) that no redeeming economic justification could be shown by Brown for the restrictive agreement, and (c) that the franchise plan "was a major factor in foreclosing markets to competitors" (R. 62). We turn to an examination of these factors to demonstrate that this restrictive vertical arrangement is repugnant to the standards of the Clayton Act and may therefore be held unlawful under Section 5 of the Federal Trade Commission Act.

#### A. THE TREND TOWARD CONCENTRATION AND VERTICAL INTEGRATION IN THE SHOE INDUSTRY

In evaluating the Brown franchise system, the Commission was concerned with the same conditions and trends in the shoe manufacturing industry of which this Court took note in *Brown Shoe Co. v.*

*United States*, 370 U.S. 294. The competitive structure of the industry shows marked trends both toward concentration and toward vertical integration. The economic and legal significance of a vertical arrangement must be analyzed against that background.

The industry is still competitive. There are a large number of small companies (typically manufacturing a short line of either men's, women's, or children's shoes). On the other hand, a few large companies "occupy a commanding position" (R. 70). The Commission found that in 1959 the five largest shoe manufacturers turned out 24 percent of the total shoe production in the country (R. 70). Each of the three largest producers—International Shoe Company, respondent Brown, and Genesco—enjoyed a dollar volume nearly twice that of the fourth largest company and more than ten times that of the tenth largest company (R. 71).<sup>\*</sup> Most important, as the Court found in the merger case (370 U.S. at 301),

<sup>\*</sup> Relative standings in the industry as of 1959 were (R. 71):

	1959 rank	Pairs of shoes produced		Dollar volume
International Shoe Co.....	1	31,529,543	International Shoe Co.....	\$283,260,000
Endicott Johnson Corp.....	2	32,407,012	Brown Shoe Co.....	278,549,164
Brown Shoe Co.....	3	29,681,274	Genesco.....	278,422,000
Genesco.....	4	29,320,000	Endicott Johnson Corp.....	148,009,113
Shoe Corp. of America.....	5	11,050,000	Shoe Corp. of America.....	117,100,000
Evy Footwear Co., Inc.....	6	8,910,000	U.S. Shoe Corp.....	80,828,923
Sandbury Footwear.....	10	6,200,000	Consolidated Nat'l Shoe Corp.....	22,864,000
Kessler Shoe Co.....	20	3,208,676	Five Star Shoe Co.....	15,060,000
Valsey-Bristol Shoe Mfg.....	30	2,517,262	Mid-States Shoe Co.....	10,100,000
Evangeline Shoe Co.....	40	2,224,300	Williams Shoe Mfg. Co.....	7,850,000
Connors-Hoffman Footwear.....	50	2,035,000	Laconia Shoe Co.....	5,510,000
Juvenile Shoe Corp.....	60	1,650,000	M. Beckerman & Sons, Inc..	4,150,000
Liberty Shoe Co.....	70	1,450,000	Sham-O-Kin Shoe Corp.....	2,312,000

NOTE.—(CX 80 A-B. These figures are exclusive of slipper and rubber, canvas, or plastic footwear).

there has been a decline in the number of independent manufacturers amounting to a "definite trend" (370 U.S. at 301). Brown has been a "moving factor" in this trend toward concentration, having acquired the stock or assets of at least seven shoe-manufacturing companies in the period following World War II (370 U.S. at 302).

The trend toward concentration at the manufacturing level had been paralleled by an equally distinct trend toward forward vertical integration involving control or ownership by the larger manufacturers of increasing numbers of retail outlets. Between 1950 and 1956, nine independent shoe-store chains, operating 1,114 stores, were acquired by the large manufacturers. *United States v. Brown Shoe Co.*, 179 F. Supp. 721, 737 (E.D. Mo.). International Shoe Company, which had no retail outlets in 1945, had acquired 130 by 1956; Endicott-Johnson Corporation, which had 488 retail outlets in 1945, had 540 by 1956; General Shoe Company had 80 retail outlets in 1945 and 526 by 1956; and respondent Brown had no retail outlets at all in 1951 but had acquired 845<sup>\*\*</sup> outlets by 1956 (370 U.S. at 301).

Brown's recent history of vertical integration is summarized both in the district court's merger opinion (179 F. Supp. at 724-727) and in the Commission's opinion (R. 72). In 1951, Brown acquired Wohl Shoe Company, the nation's largest operator of leased shoe departments. At the time of its acquisition, Wohl operated under 250 such leases, predominantly in medium-sized cities, and mainly selling women's

<sup>\*\*</sup> This figure includes those stores acquired by Brown in the Kinney merger and subsequently divested by court order.

shoes. In 1954 Brown acquired Regal Shoe Corporation, the owner and operator of a chain of 110 retail men's shoe stores throughout the country. In addition to those two major acquisitions, Brown further increased the number of its controlled retail outlets in the period from 1951-1956 by purchasing retail shoe stores in the Los Angeles area, Dallas, Midland, and Corpus Christi, Texas, and Columbus, Ohio.

But Brown's efforts toward vertical integration have not been limited to mergers. As the Court noted (370 U.S. 297, n. 1), Brown owned, operated or controlled over 1,230 retail outlets including some 570 "independently owned stores operating under the Brown 'Franchise Program' and over 190 \* \* \* independently owned outlets operating under the 'Wohl Plan.' " As the Court also noted (370 U.S. at 337-338, n. 66), "Brown was able to exercise sufficient control over these stores and departments to warrant their characterization as 'Brown' outlets for the purpose of measuring the share and effect of Brown's competition at the retail level." Significantly, while Brown was being divested of some 350 outlets which it had acquired in the Kinney merger, it increased the number of outlets under the franchise plan from 570 to some 766 (R. 62-63) at a time when the number of good retail outlets was generally declining (R. 72).

Nor was Brown alone in procuring the advantages of controlled but unowned outlets. Between 1959 and 1961, International Shoe, the largest manufacturer in

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<sup>1</sup> The "Wohl Plan" is a franchise plan for independent stores which is similar in many respects to the Brown franchise plan, but which was not in issue in the Commission proceeding. In 1958 there were 208 "Wohl Plan" stores (R. 72).



the industry, increased by 16 percent the number of independent retailers under its Merchants Service Plan—bringing the total to 1,400 (R. 73). An additional 317 retailers were members of General Shoe's Friendly Franchise Store Plan (R. 73). These two franchise plans, while varying in terms from Brown's, were found by the Commission to have the similar effect of restricting the access of competing manufacturers to the stores involved (R. 73).<sup>4</sup>

The court of appeals erred in its conclusion that the economic pattern revealed in this Court's decision in *Brown Shoe Co. v. United States* was irrelevant and in disregarding the additional findings of the Commission. The Commission was correct in analyzing the significance of Brown's restrictive agreements with more than 700 retail outlets in the light of the twin trends toward concentration and vertical integration. It would of course be highly anomalous if, following the decision by this Court that, "in the light of the trends in this industry," it had reached "an appropriate place at which to call a halt" (370 U.S. at 346), Brown could continue to foreclose retail outlets to competing manufacturers—and to do so without the outlay of capital or risk attendant on acquisition.

Moreover, "because these trends are not the product of accident but are rather the result of deliberate

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<sup>4</sup> Somewhat inexplicably, the court of appeals (R. 584) was of the view that the use of such franchise plans by International Shoe and General Shoe, rather than revealing the progressive foreclosure of retail outlets to smaller manufacturers, tended to show that Brown's plan could not be classified as an unfair method of competition. Compare *Standard Oil Co. v. United States*, 337 U.S. 293, 309, 314; *Federal Trade Commission v. Motion Picture Adv. Serv. Co.*, 344 U.S. 392.



policies of Brown and other leading shoe manufacturers, account must be taken of these facts in order to predict the probable future consequences \* \* \*” (370 U.S. at 332-333). To be sure, this is not a case in which it is necessary to speculate at length as to what the future may hold. Brown’s announced ~~its~~ purpose is the “elimination of conflicting lines” (R. 54). And it was meeting with success. Stores under Brown’s franchise plan purchased 75 percent of their requirements from Brown (R. 63).<sup>9</sup> An undetermined portion of the remaining 25 percent consisted of types of shoes which were not in competition with Brown’s lines. Franchise-plan purchases from Brown amounted to more than \$24,000,000 in 1959 or about \$2,000,000 more than the total sales of the tenth largest shoe company in the industry (R. 71). There was substantial evidence that sales by Brown’s competitors fell off precipitously when a retailer was enrolled in the franchise plan (see pp. 8-9, *supra*), and that at least some of Brown’s competitors had found it “a waste of time” to attempt to sell to stores under the franchise plan (R. 73). In sum, Brown was successfully foreclosing competitors from an ever-increasing number of retail outlets.

#### B. THE LACK OF ECONOMIC JUSTIFICATION

It is well recognized that not all vertical arrangements are equally injurious to competition. Require-

<sup>9</sup>In 1957, following the Brown-Kinney merger, Brown supplied 7.9 percent of Kinney’s needs and Kinney supplied 20% of its own needs. *Brown Shoe Co. v. United States*, 370 U.S. at 303-304.

ments contracts "may well be of economic advantage to buyers as well as to sellers, and thus indirectly of advantage to the consuming public." *Standard Oil Co. v. United States*, 337 U.S. at 306. Such contracts may assure supply, give protection against price fluctuations, and make possible substantial reductions in selling expenses. *Tampa Electric Co. v. Nashville Coal Co.*, 365 U.S. 320, 334. On the other hand, there are circumstances under which such contracts "serve hardly any purpose beyond the suppression of competition." *Standard Oil Co. v. United States*, 337 U.S. at 305-306.

Whatever may be the justification for the use of exclusionary arrangements in some circumstances, it is quite apparent that there is no such redeeming feature to Brown's foreclosure of retail outlets to competing shoe manufacturers. To be sure, there are unquestionably real advantages and economies in making available to retailers the services which Brown supplies under its franchise program. But those economies could be achieved as well if Brown charged retailers for its services. The question is whether there is any redeeming value in the exaction of an exclusive dealing agreement in consideration for those services. The only explanation which Brown offered is that it is more economical and efficient for a retailer, with a limited capital available for inventory, to keep only one brand in stock to avoid stocking "overlapping patterns" of conflicting brands. While the merits and demerits of "line concentration" were

reviewed at some length (e.g., R. 162-166, 177-181, 446-448), it was never made clear why the supposed advantages of line concentration could not be obtained by a retailer who purchased men's shoes from manufacturer A, women's shoes from manufacturer B, and infants' shoes from manufacturer C. Though such a system of purchasing seems fully consistent with Brown's theory of sound merchandising, it is expressly forbidden to retailers under the Brown franchise agreement.

But even if it were supposed that complete line concentration was the most efficient approach, one would expect that retailers would be eager to achieve the attendant economies and would not have to be held to the line by contractual agreement. As the Commission concluded, "While line concentration itself may or may not be economically justifiable, there is no economic justification for making the adherence to this doctrine the subject of agreement between buyer and seller and enforcing the agreement to the latter's advantage" (R. 59). Cf. *Standard Oil Co. v. United States*, 337 U.S. at 306.<sup>10</sup> Independent shoe

<sup>10</sup> See, also, Bok, *The Tampa Electric Case and the Problem of Exclusive Arrangements Under the Clayton Act*, *The Supreme Court Review* (Kurland ed., 1961) 267, 307-308:

\* \* \* Though "loyal" dealers may seem more efficient to the seller, in the sense that they market more of his particular product, it does not follow that such dealers are more efficient from the standpoint of the public. Since dealers will generally be anxious to make as much money as they can, they are not likely to push the goods of other producers unless the public desires the other goods or unless the wholesale prices on these goods provide a higher margin of profit. As a result, to insist that dealers sell defendant's

dealers do not need restrictions on their freedom of choice in order to achieve efficiency, although they may be willing to accept such restrictions if the inducements are high enough.

Not only is the justification proffered by Brown without merit, but none of the other factors which sometimes may justify exclusive dealing contracts is relevant to Brown's franchise plan. See *Tampa Electric Co. v. Nashville Coal Co.*, 365 U.S. at 334-335; Bok, *op. cit.*, *supra*, at 313 n. 117. The franchise plan does not obligate Brown with respect to price, and it is neither needed nor serves to assure the retailer of a source of supply. By no stretch of the imagination could Brown qualify as a "struggling newcomer" (see *Standard Oil Co. v. United States*, 337 U.S. at 308) for whom such an agreement might secure an initial foothold. The conclusion seems inescapable that, whatever may be said for exclusive dealing agreements in general, this agreement serves "hardly any purpose beyond the suppression of competition" (*id.* at 305-306) and, in this respect, "is akin to the operation of tying clauses generally held as inherently anticompetitive" (R. 68).

product to the exclusion of others will often come close to a bare demand that more competitive goods be suppressed. Moreover, if a strong and legitimate business need for exclusive selling actually does exist, it is strange that dealers will not follow this policy without being compelled to do so by contract, for the advantages that result should benefit them as well as the firms from which they buy. Perhaps an occasional dealer will be too inept or shortsighted to perceive his best interests, but such men could presumably be replaced for demonstrable inefficiency without resorting to a widespread use of restrictive contracts.

## C. THE EFFECT ON COMPETITION

The foreclosure which Brown has achieved is clearly not *de minimis* and the effect upon competition is not insubstantial. Brown's franchise program has preempted some 766 retail outlets to which Brown sold more than \$24,000,000 in 1959. It is true that Brown's 766 franchised dealers constitute little more than 1 percent of the 70,000 retail shoe outlets in the country.<sup>11</sup> However, Brown's dealers are a "select group," all of whom were considered "the better credit risks" (R. 71). Moreover, the number of stores involved has been steadily increasing (R. 72), and since the franchise program does not require of Brown the capital outlay or risk-taking entailed in acquisitions, there is no reason to suppose that the number will not continue to increase. In *Brown Shoe*, in a passage which the Commission paraphrased in its opinion (R. 69), this Court stated that <sup>where</sup> "the foreclosure is neither of monopoly nor *de minimis* proportions, the percentage of the market foreclosed by the vertical arrangement cannot itself be decisive. In such cases, it becomes necessary to undertake an examination of various economic and historical factors in order to determine whether the arrangement under review is of the type Congress sought to proscribe" (370 U.S. at 329).

Review of those factors (see pp. 22-27, *supra*), which the court of appeals completely ignored, leads to the

<sup>11</sup> The Court noted in *Brown Shoe Co. v. United States*, 370 U.S. at 300, that less than one-third of those outlets derive 50 percent or more of their gross receipts from the sale of shoes and are classified as "shoe stores" by the Census Bureau. Brown's franchised dealers comprise approximately 3 percent of such shoe stores. As indicated above (at p. 25, *supra*) an additional 208 retailers operate under Brown's "Wohl Plan."

conclusion reached by the Commission, and by this Court before it in *Brown Shoe*, that the preemption by Brown of more than 700 retailers as its exclusive dealers tends substantially to lessen competition. Viewed in the light of the recent history of the industry, the franchise program clearly appears as the growing edge of a continuous drive toward the foreclosure of retail outlets by an increasingly concentrated group of manufacturers.

Given the inclination and the ability of Brown and a few other large manufacturers to foster the "elimination of conflicting lines" at retail, there is no reason to believe that what the Commission characterized as "a deteriorating competitive situation" (R. 74) will reverse itself. On the contrary, at least one consequence of such progressive foreclosure of retail outlets is, inevitably, to make new entries at the manufacturing level increasingly difficult as independent outlets for new manufacturers become increasingly hard to find. To the extent that new entrants are excluded, a potential source of dilution and dispersion of economic power at the manufacturing level is eliminated. Moreover, small manufacturers producing less than a full line of shoes are not in a position to exact the restrictive agreements that Brown does under its franchise plan (R. 206). By reason of size rather than superior efficiency Brown, and perhaps a few others, are able to project concentration at the manufacturing level toward the retail level thus further reducing the prospects for effective economic rivalry.

Since no redeeming economic justification has been shown for the exclusive dealing aspect of the franchise



plan, the Commission had a more than sufficient basis for condemning it. The Commission did not, however, ignore the fact, which the court of appeals thought irrelevant, that the exclusive dealing aspect of the plan is merely another means to the end proscribed by the Court in the *Brown* merger case. It is, of course, true that an exclusive dealing agreement is a less permanent arrangement than a merger. However, the Commission found that in actual operation "the relationship between Brown and its franchisees is a reasonably stable one" (R. 63). Much of the stability undoubtedly stems from the fact, noted by the Court in *Brown Shoe* (370 U.S. at 338, n. 66), that "the retailer was required, under this plan, to invest his own resources and develop his good will to a substantial extent in the sale of Brown products." Moreover, even granting the relative impermanence of a contractual arrangement, the fact remains that the franchise plan involves the preemption of approximately twice as many outlets as were involved in the Kinney merger which the court found sufficiently likely substantially to lessen competition. And, as the Commission noted (R. 70, n. 33), Kinney and Brown together supplied less than 28 percent of the Kinney stores' requirements, whereas Brown alone supplies 75 percent of the requirements of its independent franchise dealers. It seems particularly appropriate for the Commission, as an administrative agency charged with policing compliance with the antitrust laws, to seek to forestall the growth of foreclosure through exclusive dealing agreements which would effectively circumvent the Court's decision in



the merger case. The decision of the court of appeals leaves a broad path to the forbidden goal.

#### CONCLUSION

For the foregoing reasons the judgment of the court of appeals should be reversed.

Respectfully submitted.

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IN THE  
**SUPREME COURT OF THE UNITED STATES.**

OCTOBER TERM, 1965.

FEDERAL TRADE COMMISSION,  
Petitioner,

vs.

BROWN SHOE COMPANY, INC.,  
Respondent.

On Writ of Certiorari to the United States Court of Appeals  
for the Eighth Circuit.

**BRIEF**

**For Brown Shoe Company, Inc.**

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**BRIEF**

**For Brown Shoe Company, Inc.**

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**QUESTION PRESENTED.**

The Commission's statement of the question presented places undue emphasis on reference in the Court of Appeals' opinion to the decision in the case of *Federal Trade*

*Commission v. Gratz*, 253 U. S. 421, 427, and implies that the reversal was based primarily upon this Court's decision in the Gratz case.

We suggest that, more properly stated, the question presented is whether the Court of Appeals erred in reversing the Commission's decision on the ground that (a) there was no evidentiary basis for the Commission's finding that the Brown franchise stores program was akin to an unlawful tying arrangement and (b) that there was a complete failure to prove an exclusive dealing agreement which might be held violative of Section 5 of the Federal Trade Commission Act.

## **STATEMENT.**

### **1. The Facts.**

#### **A. Brown Franchise Program.**

At the outset, we point out that the term "franchise" is a complete misnomer, there being nothing in the nature of a franchise involved. When the program was first commenced in 1921 or 1922 (R. 108), the present "Franchise Stores Division" of Brown Shoe Company, Inc. (hereinafter "Brown") was known as the "Store Plan Division". Then it was the "Brown-Bilt Division" or "Brown Plan Division". Approximately fifteen (15) years ago, the name of the Division was changed to the "Brown Franchise Division," simply because they thought the Brown Franchise Division was a better name (R. 169).

#### **(a) Summary statement of the plan and its purpose.**

The Brown franchise plan is nothing more than a program, plan, or policy whereby Brown agrees that so long as a dealer concentrates his business within the grades and price lines of shoes sold by Brown, i. e., carries an adequate and representative stock of such shoes and handles them in a representative manner and operates a modern up-to-date store, Brown will give to the dealer certain extra benefits and services hereinafter described over and above the benefits and services given to dealers who purchase shoes from Brown, but do not concentrate on Brown lines.

It is comparable to the Friendly Franchise Store Plan of General Shoe Corporation, offering somewhat similar benefits and services (Resp. Ex. 7; R. 550, 878) to the independent retail dealer, and under which, as the Commission has stipulated (Resp. Ex. 7; R. 550, 874): "In order to ob-

tain the benefits and services available under the program, a friendly franchise dealer agrees to purchase sufficient quantities of footwear from General, in each type of shoes (men's, women's and children's) he carries, as are necessary to assure the presence of an adequate and representative stock of merchandise in the friendly franchise store at all times." Likewise, it is comparable to the Merchants' Service Plan of International Shoe Company, offering somewhat similar benefits and services (Resp. Ex. 7; R. 550, 876) to the independent retail dealer, and under which as the Commission has also stipulated (Resp. Ex. 7; R. 550, 873), "In order to obtain the benefits and services available under the program, a Merchants' Service Dealer agrees to feature the shoes of a Division of International, in each type of shoes (men's, women's and children's) he carries, and at all times to handle such shoes in a representative manner." The Commission has also stipulated that some or all of similar benefits and services are made available, to a greater or lesser degree, at no cost or a nominal cost, by virtually all other manufacturers of branded shoes in competition with Brown, to retailers who will carry the branded shoes of such manufacturer or manufacturers in a representative manner and with adequate inventory (Resp. Ex. 7; R. 550, 874-5).

The purpose of the plan is primarily to help the dealers to do a "better retail job" (R. 99, 101); "to help that merchant do a better merchandising job and be successful in what he has set out to do" (R. 100). The fieldman "is interested in them being successful and making a profit" (R. 312). Obviously Brown is not purely altruistic in carrying on this program. It does Brown no particular good to make a single sale to a dealer, or to sell a line of shoes, if those shoes are not resold by the dealer and sold at a profit. As one of the Commission's manufacturer's witnesses said, "the initial order \* \* \* is unimportant. It doesn't mean anything \* \* \*. The initial

order is not important" (R. 144). By helping the dealer to sell Brown shoes at a profit, Brown not only hopes to keep him in business but to keep him as a steady customer of Brown.

**(b) Written agreements discontinued.**

For many years, Brown and the independent retail dealers who were on the program signed some sort of a written agreement, a copy of the last form being attached as Exhibit A to Brown's answer to the Complaint (R. 12-15). The use of a written agreement was discontinued "in recent years" (R. 19), although the exact date of such discontinuance does not appear in the Record. In 1958, there were about 321 franchise dealers who had signed written agreements (R. 754). As of November 20, 1959, there were only 259 dealers on the plan who had signed written agreements and 423 dealers were operating on the program without having entered into a written agreement (R. 773). By October 31, 1961, there were 766 or 767 stores on the program (R. 573), so that by then, at least some 507 or 508, or approximately two-thirds of the dealers were on the program without having signed any written agreement. Obviously by the present time, the percentage of dealers on the program without any written agreement is still higher, and with normal turnover, will eventually be 100%. The operation of the program is exactly the same for the newer dealers who have signed no agreements as for the older ones who have (R. 19, 101, 122).

**(c) Dealers only required to "concentrate" on Brown lines.**

Whether by written agreement or by Brown policy under the program, the dealer is not required to deal exclusively with Brown, or to buy 100% of his requirements from Brown, but only to "concentrate" his business



within the grades and price lines of Brown shoes. Nor does the agreement or policy prohibit the dealer, even by its letter, from purchasing "shoes" from other manufacturers even though they may conflict in pattern and price with some of the shoes manufactured by Brown. The language in the agreement upon which the Commission places such emphasis merely provides that the dealer will have no "lines" conflicting with Brown Division Brands of the Brown Shoe Company. A "line" is not a shoe or a few odd shoes, but is a group of women's shoes, men's shoes, or children's shoes sold under a single brand name and a general line is one that has breadth and depth in selection of pattern, type, heel height, and comparable in price (R. 120-1).

A visual representation of what is meant, in part, by a "line" is found in the In Stock Wall Chart of Brown's Air Step line (Com. Ex. 6, R. 599-600). These are the shoes of that particular line which Brown carries in stock and from which dealers can be supplied periodically from week to week and from month to month (R. 571). Other shoes in the Air Step line which are not carried in stock for fill-in orders, but have to be made up on receipt of dealers' orders (R. 571), are not shown on this chart.

As long as the dealer elects to remain on the program, he receives certain benefits, summarized in the last form of written agreement (R. 12-13), most of which, as the Court of Appeals expressly held, are available to all dealers who purchase Brown shoes whether or not on the program (R. 586).

Any saving resulting from group insurance is a saving given by an unrelated insurance company, not by Brown. Comparable savings are available to anyone who joins a comparable group program acceptable to an insurance company. As of November 19, 1959, of the 682 Brown franchise stores only about 263 elected to participate in

the group life insurance and about 409 in the group casualty insurance (Com. Ex. 121; R. 123, 771-779, l. c. 774). Some of the dealers who were not purchasing the group insurance testified that they could get insurance just as cheap or cheaper locally (R. 376, 380, 406, 430).

The Commission is correct in the statement (Com. Br. p. 6) that the "franchisees also enjoy substantial discounts on canvas and waterproof footwear manufactured by U. S. Rubber Co.," but they enjoy no greater discounts than dealers who are not on the program. There was a time, from 1950 to October 21, 1955, when Brown represented to franchise dealers that they would receive discounts over and above those if purchased directly from U. S. Rubber Co. But it developed that Brown could not be sure what discounts were being made available on purchases direct from U. S. Rubber Co. (R. 119-120); that U. S. Rubber Co. gave the same discounts to dealers after they had ceased to be on the franchise program (R. 433-436, 529); and that other rubber manufacturers were offering similar discounts to the dealers (R. 407, 430, 433, 445, 462, 475, 522). These representations ceased after October 1955.

**(d) Heart of the program—services to dealers.**

But the very heart of the program, and the thing which is of the greatest benefit to the dealers, is the assistance which Brown gives to the dealers, which may be divided into two classifications.

First, there are services rendered at or from Brown's home office, in analyzing the dealer's reports, writing the dealer "on many occasions as they see certain strengths of his business and compliment him on certain phases of his business, or if they see weaknesses that might be cropping up in the business, to point those things out to him and recommend that he take steps to strengthen his position in certain phases of his operation, whether it be

merchandising or financing or whatever the specific case might be" (R. 113); sending out "periodically to the franchise stores suggested ideas on merchandising, preparation for clearance sales, preparation for peak seasonal periods of the year" and "also working up at the request of dealers, financial guides that would help them in the guidance of their business financially" (R. 107).

Second, there are those rendered in person by the field-men at the dealer's prospective or actual place of business wherein they would "counsel with a prospective dealer who is considering a location, to assist him in making a survey for that location and review the lease that the landlord might submit to that man as a prospective tenant, to give the prospect his opinion regarding any clauses in that lease that he would recommend the prospect to go back and discuss with the landlord" (R. 110); "Many a dealer is the owner, his wife is interested in it with him, and he is not too highly skilled in making deals with the landlord. So he is helped in that situation to know how much he should pay or what kind of an arrangement he should make. Because if a lease on a retail business is too high, it is extremely difficult for that merchant to do a decent service job for his community so he is helped in that sense" (R. 101); "Giving advice and suggestions or (sic) merchandising, sales promotion, personnel, accounting and record-keeping, and other matters pertinent to the conduct of a profitable retail shoe business \* \* \* upon request, conduct a sales clinic or a salesmanship lecture for the store personnel. Such a lecture may be accompanied by recordings to shoe store salesmen how to sell more shoes" (Com. Ex. 121; R. 774); he can be an auditor from the "stand-point of helping them with their figures as they need them. Or he can help them lay out a buying plan, to set up figures for certain kinds of shoes so his money is divided out in such a way that he can do the very best retail job

without having the pressure of selling attached to it" (R. 100).

Boiling it down, "the fieldmen's services are to observe, analyze and recommend, but not to dictate" (R. 110). In substance, these fieldmen help the dealer to "merchandise" his shoes more intelligently, more efficiently, and more profitably.

**(e) Inability to help merchandise conflicting lines.**

The fieldmen, not being familiar with the lines of other manufacturers, cannot be of much help to dealers in the merchandising of such other lines (R. 268, 273, 301, 309, 319).

Counsel for the Commission conceded this point by saying to the witness (R. 271), "I know that you can get more use out of the fieldman [by concentrating on Brown lines] because he can work on all your lines."

As one of the dealers testified (R. 268): "I think the more Brown shoes you carry the more help your Brown fieldman can be to you. Suppose I was buying Red Cross [manufactured by a competitor of Brown] shoes and Naturalizer [a Brown brand] shoes. Suppose I continued that and my operation was big enough to continue that. I don't think the Brown fieldman could be of much help in buying Red Cross shoes. I don't think he knows the line well enough to be of much help to me."

A fieldman testified (R. 301) that he is acquainted with the performance of the Brown lines in the stores in his territory; he has information with regard to styles and patterns of Brown lines; the company periodically sends out information on the best sellers; he gets performance indication in regard to particular styles of Brown shoes; that information aids him very materially in his work as a field representative; and he is in a position to pass that information on to the dealer; that is an important

function of his services as a fieldman. But (R. 301) "he cannot do that with respect to other brands, manufacturers' lines of shoes. He has no knowledge of how they are performing."

Another fieldman testified that there are constant style changes, particularly in women's shoes, and fashion consciousness on the part of the women customers, and that he is able to give the dealer advice on that score (R. 309), "For example, they are sent from the office a list of the twelve best-selling patterns in each line of shoes. The lines referred to are all Brown Shoe Company lines \* \* \*. He is more familiar with Brown shoe lines. He does not have that same information, for example, on Red Cross shoes, as the information that he gets from his home office on Brown shoes" (R. 310). "Then when he calls on a dealer and helps him on his buying guide, he as a fieldman is informed as to the performance of Brown shoes particularly, and that information is important" (R. 319), "he is not in the same position to give the same type of counsel and advice with regard to brands of the other manufacturers. He is unfamiliar with them. As to whether this has any effect on his ability to counsel with the dealer on his over-all operations of his store, the witness said, I would be able to give a dealer much more help in counselling and guidance in lines with which I am familiar than the other lines that he is carrying in the store because the only thing I would have to work with would be his pairage guide on the back of his monthly report and buying guide. I have no idea of the style, pattern or service policies or what have you of other lines than those I work with.

And Mr. J. R. Johnston, the head of the Brown Franchise Division, testified (R. 167-168) with respect to lines of other manufacturers:

"We are not familiar with that line, how that line functions, and its services and style not as we are

familiar with our own Brown brand. So we are just not in a position to sit down and work with that man and discuss the intimacy of his business, the segments of his business, because we are not familiar with the lines' functions that he might be buying, that are in direct conflict with our line. The witness has reference to the activities of the fieldman under the franchise program in dealing with the store owner."

By and large, each fieldman has a multi-state territory and will visit the stores in his territory from two to ten times a year (R. 20).

The Brown Franchise Stores Division does not sell shoes nor do the fieldmen. They sell ideas, so to speak (R. 106). The shoes are sold by salesmen operating out of the Brand Divisions of Brown which are selling divisions (R. 106), and a separate salesman will call on each franchise dealer representing each separate brand line sold by Brown to that dealer, so that if the dealer carries three Brown lines, he will be solicited by three Brown salesmen (R. 18).

Fieldmen are compensated by salary and their expenses. Their remuneration is not keyed to the sales of their stores (R. 110). On the other hand, Brown's salesmen who call upon dealers, whether they are on the franchise program or not, are compensated on a commission basis (R. 102).

A number of factors enter into the selection by a shoe retailer of the brands or lines of shoes to be carried in his store. However, the basic criterion, to which all other factors relate, is the performance of the line, i. e., how it sells, and the profit to be gained from selling the line. It is a fundamental fact that shoe dealers, like other merchants, are in business to make a profit. Thus, they want lines of shoes that sell well and sell at a profit (R. 257-8, 276, 336-7, 414, 497).



**(f) Difficulties of shoe retailing and line concentration.**

Shoe retailing is a highly competitive and difficult business in which to make a profit, and to be successful requires considerable skill (R. 100). The inventory of merchandise is very important to every shoe retailer. Lines of shoes are normally separated by type according to the persons for whom they are intended; i. e., men and boys, women, growing girls and children. Each style of shoe carried within a brand line must be stocked in varying lengths, widths and colors, and for women's shoes different heel heights and materials. Commission's Exhibits 6 and 7 (R. 103, 599-601) demonstrate the large number of shoes necessary for adequate inventory coverage in just one style of a particular brand. Variations in size and width alone commonly run between 50 and 100 different size-width combinations. In addition, there are different colors or leathers in which the shoe is available.

A relatively large number of pairs must be stocked for every color and style of shoe offered for sale by a dealer. Furthermore, many of these sizes must be stocked "in depth" by the dealer so that he can sell the same size shoe in any one style and color to more than one customer without having to wait for his stock to be filled in by another re-order. Shoe sizes more commonly encountered in his customers require this greater depth of stock (R. 291, 317). A successful dealer learns to anticipate the demand for these sizes in his community through prior experience (R. 253-4).

Because of the number of sizes and styles required to stock a modern shoe store, the practice of line concentration by a dealer necessarily includes the avoidance of conflicting lines, shoes that are similar in price, quality and style, whereby the dealer would be in competition with himself with another brand of shoes (R. 498, 504). The presence of conflicting lines in a store almost always leads



to duplication of styles (R. 253, 292, 346, 427). The practice of line concentration by a shoe dealer reduces or eliminates this duplication of styles in the same type and price of shoe, enables the retailer to carry a sufficient range and depth of sizes, and increases the number of times the merchant can turn his stock over during the year thereby increasing his return on his capital investment (R. 300, 312, 317-8, 398-9, 513).

Line concentration is rarely, if ever, practiced in a pure form. Nonetheless, for the successful independent family shoe store it is an established principle of good retailing in the shoe industry, and serves to lessen the inventory problems and increase the profits of shoe retailers who practice it (R. 256, 332-3, 352, 457). As one witness put it,

“It’s almost a maxim in the shoe business that a greater degree of concentration produces a greater degree of profits” (R. 322).

Some dealers by reason of their many years of experience are already skillful merchants and do not need outside advice in these matters, but the services of field men are needed by many dealers because shoe retailing is not a simple matter. As William E. Freeman, one of the Commission’s manufacturer’s witnesses said twice, “Dealer’s need help \* \* \*” (R. 206, 211).

The program is not entirely a one-way street. In addition to concentrating his business on Brown lines, the dealer is called upon to “operate a modern, attractive store at all times, staffed by efficient personnel and backed by adequate capital;” provide for a local advertising budget and to “promote and merchandise aggressively to secure maximum volume;” to carry full insurance on the stock and fixtures; to maintain and use Brown’s Merchandise Record System; to use and keep current the complete accounting and bookkeeping system provided by

Brown; to make regular monthly reports; and not to encumber the stock or fixtures by chattel mortgage, or otherwise, etc. (R. 14).

**(g) Plan terminable by dealers at will.**

The Commission states (Com. Br. p. 6) that "The franchise agreement is terminable by either party upon 30 days' notice, \* \* \*." The Commission fails to point out, as the Court of Appeals expressly found not once but twice, that the arrangement, whether evidenced by a written agreement or as embodied in the program, is terminable at will, saying (R. 586), "Retailers were free to abandon the arrangement at any time they saw it to their advantage so to do", and (R. 589) "Brown has not 'acquired' the retail outlets of those who join its program. The latter are free to leave it at any time."

Not only are the dealers free to withdraw from the program at will, but they actually do so. Usually such termination is accomplished without formal notice to Brown, by the dealer simply purchasing other lines of shoes and not reordering Brown lines of shoes in their place, accompanied by a failure to send in his monthly reports (R. 529-30). The formal termination of the arrangement between Brown and a dealer is usually nothing more than a confirmation by Brown of a *fait accompli* previously consummated by the dealer. The 30-day notice provision was one inserted for the protection of the dealer so as to assure him ample time to replace any insurance he might be carrying under the program (R. 170), and this 30 days was extended when required (R. 116-7).

The shoes purchased by dealers on the Brown franchise program are sold at the same prices and upon the same terms as those sold to all other customers of Brown (R. 100, 106, 117-118, 566), and dealers leaving the Brown

franchise program are not only permitted to, but in most instances do, continue to buy Brown shoes thereafter, also at the same prices and upon the same terms (R. 117, 530).

**(h) Beneficial results to dealers.**

Brown feels that the program "has been very beneficial, we think, to many merchants, and it has been beneficial to our company in our relations with our customers" (R. 100-101). Some measure of the extent of the benefit to the dealers is found in the fact, expressly found by the Commission (R. 72) and as pointed out by the Court of Appeals, "Brown franchise dealers were successful, having an average rate of return of 16% against an average return of other independent shoe dealers in America of 11.8%" (R. 591). This probably explains why, as the Commission pointed out, "the relationship between Brown and its franchisees is a reasonably stable one." (R. 63).

**B. Effect of the Restrictive Provisions.**

The Commission contends that the effect of the "restrictive" provisions was to cause dealers on the plan to exclude conflicting lines and to purchase, on the average, 75% of their total shoe requirements from Brown, thereby foreclosing such retail outlets to Brown's competitors, particularly small manufacturers. There is a question as to which is cause and which is effect,—whether or not the provisions of the plan cause the dealers to concentrate on Brown lines, or whether they go on the plan and obtain the incidental benefits because they are already sold on Brown shoes and have already decided to concentrate on Brown lines. Every dealer who was asked the question testified, in effect, that he purchased Brown lines and concentrated on Brown lines because he was "sold" on Brown shoes (R. 293, 349, 352, 376, 384, 420, 424, 427, 454, 483, 489, 507), and that he would quit concentrating on Brown lines and would purchase other and conflicting lines whenever he

thought that he could do better with them (R. 292, 340, 376, 420, 424, 458, 478, 499, 503, 513). Even the Hearing Examiner conceded that the quality of the shoes, rather than the benefits of the plan, was the first consideration affecting the dealer's decision (R. 172). But regardless of the question as to which was the cause and which was the effect, the fact remains that the dealers on the plan did concentrate their business on Brown lines, buying from 60% to 95% in individual cases, and on the average 75%, of their total shoe requirements from Brown, with some undefined portion of the remainder, consisting of shoes retailing at a higher or lower price than those available from Brown (R. 63). According to the Outside Line Survey (Resp. Exs. 11-13; R. 564, 888-899, l. c. 890), five out of six dealers on the plan carried shoes which did directly conflict with Brown brands, and in some cases, more than one conflicting brand. Thus, although these five out of six dealers were not, in most cases, carrying complete conflicting lines, but only selected models from such lines the manufacturers of such conflicting lines had direct access to the dealers on the plan. Each such manufacturer had his foot in the door, and was in a position to sell to the dealer his complete conflicting line whenever he or his salesman could convince the dealer that he could do better with such line than with Brown's line.

**1. The Commission's Six Manufacturer Witnesses.**

In order to support its contention that the effect of the Brown franchise program was to foreclose competing manufacturers from the market represented by the Brown franchise stores, the Commission offered the testimony of only six witnesses. These were officers or representatives of six competing manufacturers, who testified, generally speaking, to the loss of customers, which losses they attributed to the program and to their difficulty in selling to dealers on the program, i. e., their difficulty in getting

such dealers to throw out Brown lines and substitute their own.

All of these witnesses conceded that it was perfectly normal in the shoe business to have a turnover in retail customer accounts—accounts being added when their salesmen were successful, and lost when salesmen from competing manufacturers were successful (R. 139, 157, 194, 210, 229, 243). While they complained of their difficulty in getting their lines into Brown franchise stores in place of Brown lines, they admitted that a salesman always has a problem in trying to introduce a new line into the store of any dealer who already had a line with which he is getting satisfactory results; that in such situations there is sales resistance if the lines are comparable insofar as quality, styles and patterns are concerned; that it is a part of doing business for the salesman to go out and try to sell his line of shoes in preference to some competitor's line, and that it takes real skill for a salesman in selling a dealer who is already carrying a competing line to persuade that dealer to replace it (R. 138, 194, 210, 227, 229, 245).

It may be conceded that competitors of Brown are not satisfied with their sales to Brown franchise stores. Few companies are ever really satisfied with their sales results, but the actual financial results showed that only one of six companies, Deb Shoe Company (hereinafter "Deb"), was really suffering from declining business (R. 145), and as will be pointed out below, the reason for such loss of business was not connected in any way with the Brown franchise program. Of the other five, Weyenberg Shoe Manufacturing Company's (hereinafter "Weyenberg") 1959 earnings were record earnings for the company, 10.3% more than in 1958 (Com. Ex. 89-B; R. 91, 741) and were in excess of 6.5% of sales (R. 226), and Weyenberg's balance sheet as at December 31, 1959,

showed current assets of \$9,413,800 and current liabilities of only \$1,530,696, a ratio of nearly six to one (R. 226).

Juvenile Shoe Corporation of America (hereinafter "Juvenile") had been growing as far as shoes produced and shoes sold, sold 7.2% more pairs of shoes and 7.1% in dollars (Com. Ex. 89-B; R. 91, 741), in 1959 than it did in 1958, and the general financial condition and net worth of the company was continuing to grow throughout the years, including the current year, compared to last year (R. 139).

Freeman Shoe Corporation (hereinafter "Freeman") not only had an increase of 5.1% (Com. Ex. 89-A; R. 91, 740), in the number of pairs of shoes sold and an increase of \$835,000 (Com. Ex. 89-A-B; R. 91, 740-1), in 1959 over 1958, but the company's sales in dollars in 1959 were the highest in the company's long experience (R. 208).

Huth-James Shoe Company (hereinafter "Huth-James"), a manufacturer of men's and boys' shoes, who did no national advertising, had an over-all increase in their business over the last five years (R. 193), in spite of the fact that the national per capita sales of men's shoes had been down slightly in the last ten years (R. 197).

Leverenz Shoe Company's (hereinafter "Leverenz"), a manufacturer of men's and boys' shoes, which did no national advertising (R. 245, 246) dollar volume was without a doubt up in 1959 over the preceding year (R. 243).

As for Deb Shoe Company, it did not commence business until 1946 but by 1959 its sales were around \$9,000,000 (R. 145). Its business was off from 1958 but we submit that the reason why its business was falling off was not due to the Brown franchise program or similar programs by other manufacturers, but rather to their own internal production problems. Thus, Robert P. Howe, the proprietor of Howe Shoes, Inc. of San Bernardino, California, testified that his store had been on the Brown franchise store



program for twenty-two years (R. 397); that he has been carrying Deb shoes ever since 1946 or 1947, and does so because they produce a type of footwear which fits his merchandising program; that the line performed well the first few years, but after that the fitting qualities deteriorated to the point where his mark-downs on them became extensive; that, accordingly, he had transferred some of his business "in flats" which he had been purchasing from Deb to other manufacturers; that he still buys some Deb shoes and Brown has never attempted to prevent him from doing so (R. 400). Again, Edward Bomar testified that he is Vice President of Bomar, Inc., although no longer in the active management; that Bomar operated four stores in Mississippi; that in 1948, while their stores were on the Brown franchise program, they bought Deb shoes which they carried until about 1953; that they did "real well" with the shoes for a couple of years but Deb got later and later with delivery dates, the quality and workmanship began to deteriorate, and finally they couldn't get along with the Deb people at all and had to drop them (R. 323); that "the shoes had become poor-fitting shoes. They had so much work that it was coming out of their ears, and they couldn't deliver shoes on time, and they were ramming them through the factory, and they were coming out very shoddy. These were all contributing reasons as to why they dropped Deb shoes" (R. 325). When the line was dropped they replaced it with shoes from another manufacturer, not Brown (R. 323). This testimony as to dealers' problems with Deb's shoes was not contradicted.

Furthermore, the testimony of these six manufacturer witnesses was based primarily upon hearsay, upon statements or reports of their respective salesmen as to their reason for having lost business or being unable to get business, and there was little causal connection shown between the loss of business and the Brown franchise plan in the specific instances which they cited.



Thus the Commission, obviously selecting the three examples deemed most favorable for its purpose, cites (Com. Br. pp. 8-9) as evidence of the foreclosure of Brown's competitors, first, the fact that Leverenz Shoe Company, "sold one retailer [Meyers Shoe Store, Watertown, Wisc.] \$2,399.12 worth of shoes in 1955, but lost the account altogether in 1957 when the retailer became a Brown franchisee (R. 65)." But the Commission fails to point out that although this particular dealer did not join the Brown plan until August, 1956, the dealer wrote to Leverenz on March 8, 1956, some five months earlier, cancelling orders from Leverenz because, "I find I am over-bought and can't afford to pay for them" (R. 847). Next, the Commission cites (Com. Br. p. 9) the fact that Weyenberg Shoe Company "saw sales to two of its accounts drop from \$8,388 to \$186.00 and from \$2,782 to zero, respectively, when the dealers joined the Brown franchise program and agreed to drop conflicting lines (R. 65)." But the Commission fails to point out that in the case of the first dealer there had already been a substantial drop in the dealer's purchases (from \$8,388 in 1953 to \$3,219 in 1954), and the dealer did not go on the plan until May, 1955. Obviously, the dealer was dissatisfied with the results he was getting from Weyenberg shoes well before he joined the plan and that was probably an important factor in causing him to do so. In the other case, the dealer was not an established customer of Weyenberg, having made his first purchase in November, 1957, and joined the Brown plan within fifteen months thereafter. In connection with Weyenberg the Commission also entirely disregarded the testimony of Victor Vandenburg, who operated two shoe stores at Portland, Oregon, on the Brown Franchise Program. Mr. Vandenburg testified that his principal line of men's shoes in both stores was Weyenberg, and that no one from Brown ever told him he could not carry the Weyenberg shoe line because they are a Brown franchise

store (R. 517). Finally the Commission cites (Com. Br. p. 9) the fact that Juvenile Shoe Corporation who "had formerly sold as many as 1,530 pairs of shoes annually to a shoe store in Plymouth, Michigan, suffered a decline to only 188 pairs following the store's enrollment in the Brown plan (R. 65)." But an examination of the detailed information in the record with respect to this dealer, Fisher Shoe Store of Plymouth, Michigan (Com. Ex. 138-A, R. 813) will show that he joined the plan in December, 1952 (R. 65) but continued each year until 1959, the last year shown, to purchase substantially the same amount of Juvenile's "Clinic" brand shoes, which compete directly with two of Brown's brands, and that the decline in purchases is only in children's shoes, which were presumably supplanted by one of Brown's lines of children's shoes, although there is no direct evidence in the Record to that effect.

The other testimony of these witnesses, not cited in the Commission's Brief, gives little or no support to the Commission's contention that competing manufacturers were foreclosed from Brown franchise stores, and, in many instances, affirmatively shows that there was no such foreclosure.

Thus Charles Arend, of Juvenile, produced a list of twelve stores (Com. Ex. 138, R. 134, 813-814), which he said were Brown franchise stores which had either stopped buying from him or significantly curtailed their purchases. The list shows continuing purchases by every store on it of Juvenile's Clinic shoes, which compete directly with parts of Brown lines (R. 182). While five of the stores on the list show no purchases of Juvenile's Lazy Bones shoes (R. 813-814), there is no evidence that any of these five stores had ever purchased Lazy Bones shoes before they went on the Brown franchise program. One of the stores, Kerr's Shoes of Monroe, Wisconsin, shows varying purchases of Juvenile's Lazy Bones shoes

from 1956 through 1959, apparently in no way related to the fact that it became a Brown franchise store April 6, 1955 (Com. Ex. 141, R. 214, 835), nor is there any evidence as to whether or not it purchased any of such shoes or how many, before going on the program. Houston's Shoe Store, Berkeley, California, made substantial purchases of Juvenile shoes every year from 1954 through 1959 (Com. Ex. 138-A, R. 134, 813). The R. L. Holmes Shoe Store of Morristown, Tennessee, became a Brown franchise store in 1928 (Com. Ex. 138-B, R. 134, 814), and yet it was still buying Juvenile shoes in every year from 1956 through 1959.

Mr. Arend offered no evidence of any causal connection between any loss of sales by Juvenile to Brown franchise stores and the provisions of the Brown franchise plan. On the contrary, direct evidence as to the reason why Juvenile was losing sales was given by the testimony of three dealers. Don A. Hanson, Manager of Hudson Shoe Stores, Inc., of Burley, Idaho, testified that his purchases of Clinic shoes from Juvenile had decreased because of Juvenile's policy of refusing to take back shoes when manufacturer's defects showed up in them; that he had put in a companion line of another brand (not one of Brown's) and that the increase in his sales of nurses' oxfords was in such line (R. 491).

William B. Howard, the owner of a Brown franchise store in Hillsboro, Illinois, testified that after seeing the Clinic line at a shoe show in St. Louis he wrote to Juvenile asking for a salesman to call on him and sent them an order for 32 pairs of Clinics in two styles worn by nurses at the hospital in Hillsboro (R. 285-286). Mr. Howard received a letter from Juvenile advising him that the company was not in a position to serve him at this time (Respond. Ex. 1, R. 276). He heard nothing further from Juvenile after receiving that letter (R. 276).

Orville Shugarts testified that his company, Heydrick Shugarts, Inc. has two stores, one in Clearfield, Pennsylvania, and the other in Phillipsburg, Pennsylvania, one of which had been on the Brown franchise program since 1935 and the other since 1956; that they have been carrying Juvenile's Clinic shoes in both stores since 1956; that when they opened the store in Phillipsburg in 1956 a hospital located in that town required the freshmen, or first-year training nurses, to wear black shoes rather than the women's white shoes normally worn by nurses, such as Clinic shoes; that the black shoe was not available in the Clinic line but was available in Juvenile's Lazy Bones line, and, accordingly, they purchased a number of such shoes. However, the following year, the hospital changed the regulation so that it was no longer necessary to buy black oxfords and the store discontinued Juvenile's Lazy Bones shoes. It had nothing to do with the store being a Brown franchise store, and no one from Juvenile had ever tried to sell him Lazy Bones shoes as a line (R. 541-542). He further testified that his records showed that while his purchases of Clinic shoes had declined in 1958 and 1959, this was due solely to depressed economic conditions in their area (R. 543).

In spite of this testimony with respect to the alleged difficulty his salesmen had in selling to stores on the Brown franchise program, the uncontradicted evidence showed that Juvenile was selling 68 out of 573, or approximately 12% of Brown franchise stores (Resp. Exs. 11-13; R. 564, 888-899, l. c. 892), as compared with only 2500 or 2600 out of the nation's total retail outlets of 70,000 or approximately 3.7% (R. 137, 97).

Mr. Jack Altman, of Deb Shoe Company, testified that he had not personally called upon a Brown franchise store and tried to sell it shoes in four or five years (R. 153); that he had no chance to sell Deb shoes to Brown franchise stores (R. 151); but later admitted that Deb does, in

fact, sell to some Brown franchise stores (R. 151, 153, 154). He gave the names of a few franchise stores which he said he had sold at one time but not any longer, among which were the Hill & Shipe Stores (three in Oklahoma and several in Texas (R. 391)), Howe's Shoes at San Bernardino, California, and Bomar's at Jackson, Mississippi (R. 151, 153, 154).

The reasons why he no longer sold these stores were disclosed by testimony of the operators. Guy Shipe, the partner of the Hill & Shipe Shoe Store, testified that they started buying Deb Shoes for their stores after World War II and while they were on the Brown franchise program; they later stopped purchasing Deb shoes because the shoes weren't making any money for them (R. 391); Brown had nothing to do with it (R. 391). The testimony of Robert P. Howe and Edward Bomar has been outlined above.

Among other things, Mr. Altman testified that he had visited a "100 per cent" Brown franchise store called "Quality Shoe Store" in Brunswick, Georgia about two months before he testified (R. 159-60). Brown has no such franchise store, nor did it ever have (R. 565-6). The uncontradicted evidence showed that Deb was selling 15 out of 573, or approximately 2.6% of Brown franchise stores (Resp. Exs. 11-13; R. 564, 888-899, l. c. 890-1) as compared with only 1600 to 1700 out of the nation's total retail outlets of 70,000, or approximately 2.3% (R. 146, 97).

Harold Laverenz, of the Huth-James Shoe Company, testified that he obtained his information about the Brown franchise plan from his salesmen and accounts he had called on (R. 188); he could not think of any of the names of any accounts of Brown franchise stores on the list in evidence (Com. Exs. 23-24, R. 108) which either he or his salesmen had called on in the last four or five years and attempted to sell (R. 191), he did not remember calling on

any Brown franchise stores except one when he was a salesman (R. 188, 191); he did not recall the names of any Brown franchise stores except one—that of Passmore at Sault Sainte Marie, and that name was suggested to him by Commission counsel (R. 190). The record shows no such Brown franchise store as Passmore at Sault Sainte Marie (Com. Exs. 23-24, R. 108).

William E. Freeman, of Freeman Shoe Corporation (Freeman), first testified that none of the stores on the list of Brown franchise stores (Com. Exs. 23-24, R. 108) were currently substantial customers of Freeman, and as to the market represented by these stores, said: "Well, we have access to it but we don't participate in it, for some reason or other" (R. 205). However, he later admitted that Freeman sold certain specific stores which were called to his attention (R. 208-10); that he did not know whether Freeman was selling to certain others (R. 208-10); and admitted that his examination to determine whether Freeman sold to Brown franchise stores had been a "rather cursory one" (R. 209). Actually, the uncontradicted evidence shows that Freeman was selling 24 out of 573 Brown franchise stores (Resp. Exs. 11-13; R. 564, 888-899, l. c. 891). He cited four instances as to which he had been "informed" that the company had lost business because the account involved became a Brown franchise dealer. In most there was no correlation in point of time, and in no case was there any substantial evidence of a causal connection between the loss of the business and Brown's franchise program. Thus, he testified that during the period of 1948, to 1951, he sold Freeman shoes to the Hub Shoe Store in Shelbyville, Indiana, and that at the time he left in 1952, Freeman was shipping approximately 800 pairs a year to that shoe store (R. 203). However, it is undisputed that Hub Shoe Store went on the Brown franchise program on January 10, 1950 (Resp. Ex. 14-A and B; R. 565, 900), so that Freeman's substantial sales to the store



continued for some three years thereafter. He testified that Freeman ceased selling a store known as Jo-Mar Shoes, Inc., in LaSalle, Illinois, early in 1959 (R. 203). But the previous owners of the store, whom Freeman had been selling, sold out in 1958 and the new owners did not go on the Brown franchise plan until December 17, 1959 (Com. Ex. 141-G; R. 214, 822). He referred to declining sales to a store known as Wells Shoe Store in Ferguson, Missouri, and another known as Juels in Brookings, South Dakota (R. 203-204), but these stores did not go on the Brown franchise plan until a couple of years after a significant decrease in the purchase of Freeman shoes had occurred (Com. Ex. 141-K and Q; R. 214, 826, 832).

He admitted that, with respect to the additional services, such as the type Brown may offer "dealers need help \* \* \*", but it would be too costly for his company to furnish such services because they are exclusively a men's dress shoe manufacturer and it would not be logical to provide such services for the dealer's entire operation (R. 206).

Raymond S. Shannon, of Weyenberg Shoe Manufacturing Company, testified that his company could not sell Brown franchise stores and had lost accounts due to the Brown franchise plan (R. 217-8, 223-4); but that this testimony and such knowledge as he had of the program was obtained from contact with salesmen and with other merchants (R. 217). Actually, the uncontradicted evidence shows that Weyenberg was selling 34 (Resp. Exs. 11-13; R. 564, 888-899, l. c. 894) out of 573, or slightly less than 6% of Brown franchise stores, as compared with 4500 out of the total retail outlets of 70,000, or slightly in excess of 6% (R. 216, 97).

George E. Friedley of Leverenz Shoe Company, testified that his company's prospects for selling shoes to Brown



franchise dealers were poor except for a particular specialty shoe which Brown might not manufacture (R. 239). He produced the sales records of three shoe stores that were customers of Leverenz (Com. Exs. 152, 153, 156, R. 235-6, 238), purporting to show losses of sales to Brown franchise stores. But, in the first of these, the Winona Bootery of Winona, Minnesota, there was a change in ownership which occurred before the new owner went on the Brown franchise plan (R. 244); the case of the Meyers Shoe Store, of Watertown, Wisconsin, has been discussed above; and the third store, Emerling Shoe Store of Hamburg, New York, ceased being a substantial customer of Leverenz in 1954 (Com. Ex. 156; R. 238, 848), but didn't become a Brown franchise store until March, 1956 (Com. Ex. 141-M; R. 214, 828).

As against this most inconclusive testimony of the six manufacturers' witnesses produced by the Commission, the Record evidence is replete with testimony of thirty-odd Brown franchise dealers as to exactly why they did not carry the lines of shoes manufactured and sold by Juvenile, Deb, Freeman, Weyenberg, Huth-James and Leverenz, and the Hearing Examiner refused to receive the testimony of additional dealers (R. 523-5). Many testified they were sold on the lines of the shoes they were carrying, and for that reason did not wish to substitute or add another line of shoes (e. g., R. 338, 465, 504). Others testified it was because the line in question did not fit into their particular shoe retailing picture (R. 408, 458). Time and time again, franchise dealers testified that they had never been called upon by salesmen representing these companies. For example, Juvenile (R. 365-6, 519); Deb (R. 420-1, 504, 519); Weyenberg (R. 290, 421, 485, 500); Freeman (R. 333, 349, 485). Another cause of the failure of these competing companies to sell Brown franchise stores was the fact that in numerous instances such companies already had other shoe outlets in town carrying and

selling their lines, and were not interested in selling to other outlets there (R. 328, 360-1, 464-5, 477). The converse of this is equally true. Dealers in small or medium size towns are influenced, to a considerable extent, in refusing to consider other lines of shoes by reason of the fact that such lines are already being sold by another shoe retail outlet in their town (R. 346, 372-3, 493-4).

The record shows that the primary reason Huth-James and Leverenz were selling to so few franchise dealers is because they are regional companies whose shoes are not advertised or sold nationally and are not as well known as the lines of other manufacturers of men's shoes. A number of franchise dealers testified they were not acquainted with these two lines (See, for example, (R. 275, 334, 338, 343, 347, 349, 353, 361, 410, 429, 452-3, 485, 520, 534)). The majority of franchise dealer witnesses had never been called upon by a salesman from either company (R. 257, 290, 328, 334, 349, 373, 382, 387, 401, 410, 421, 465, 471, 477, 485, 494, 500, 505, 516, 520, 534, and preceding citations).

In considering whether Huth-James or Leverenz are, in fact, foreclosed from Brown franchise stores, it should be noted that Weyenberg and Freeman, whose shoes are in direct competition with Huth-James and Leverenz men's and boys' shoes, sold to 34 and 21 Brown franchise stores respectively of the 573 stores reporting (Resp. Ex. 11-13; R. 564, 888-899, l. c. 891, 893-5). If the Brown franchise stores are not foreclosed to Weyenberg or Freeman shoes, there is certainly no reason to believe they were prevented from buying Huth-James or Leverenz shoes. Thus, the total of reporting Brown franchise stores, buying one of these four men's shoe lines, which compete with Brown's branded men's lines, was 61 stores.

By the same token, many other brands listed by the six manufacturer witnesses as competitive with their lines are found among the lines reported by the franchise deal-

ers. Thus these dealers can and do carry shoes of these competing lines, it seems, as well as the brands of the six competitors who testified.

## **2. The Commission's Decision.**

We have had some difficulty in understanding the precise rationale of the Commission's decision. In its Complaint, in Count I, the Commission charged (R. 3, 4), in substance, that the agreements, written and oral, between Brown and the operators of the Brown Franchise Stores, were exclusive dealing agreements, such as are prohibited by Section 3 of the Clayton Act, and for that reason constituted unfair methods of competition under Section 5 of the Federal Trade Commission Act. The case was tried before the Hearing Examiner upon that theory.

In his opening statement Counsel Supporting the Complaint stated, with respect to Count I, *inter alia*,

“Brown has entered into a contract which requires this group of customers to deal exclusively with them to the exclusion of all other competitors producing and attempting to sell similar types of shoes” (R. 85).

Counsel Supporting the Complaint also stated that, after an operator had been dropped from the program

“\* \* \* the Brown Company does not then refuse to sell the franchisee shoes. They will continue to sell him shoes, but they deny him certain services which he was granted on the condition that he deal exclusively” (R. 85).

Again Counsel Supporting the Complaint stated

“The effect of this contract and Brown operations under this contract is to foreclose and exclude competitors from a substantial segment of the shoe market  
\* \* \* that Brown does enforce these exclusive-dealing

contracts with approximately 700 of its customers. Without more this is a violation of the Federal Trade Commission Act, section 5" (R. 86).

The taking of testimony commenced on March 16, 1960 (R. 88), and was not completed until October 30, 1961 (R. 547), at which time the Hearing Examiner was still under the impression that the charge in Count II of the Complaint was under Section 5 of the Federal Trade Commission Act, but that the charge in Count I was a charge of exclusive dealing under Section 3 of the Clayton Act. Thus, when counsel for the Company said

"Well, I believe that inasmuch as this is a Section 5 proceeding and we are charged with some type of unfair trade practice——"

the Hearing Examiner said

"Well, a Section 5 charge is the resale price maintenance. The other charge is under Section 3, isn't it?" (R. 547).

The Hearing Examiner found in Paragraphs 41 and 42 (R. 28), in considering the substantiality of the effect of the plan, that

"The substantiality of the effect is distorted by attempting to compare the market share sold through the franchise plan to the total United States market. It appears that each trading area where a Brown Franchise Plan account is located would be the appropriate geographical market in which to appraise the effects of the restrictive provision because the retail shoe market is not a national market except to the slight extent that shoes are bought by mail", and concluded that

"Since there are about 600 such trading areas, in most of which the effect of the restrictive provision

is substantial, it is concluded that the total effect on competition is substantial.”

The Examiner then made his decision, on Count I, according to the standard of illegality of Section 3, saying (R. 30):

“It is found and concluded that the effect of the methods, acts, and practices of the respondent, as hereinbefore found, has been, is, or may be, substantially to lessen, hinder, restrain, and suppress competition in the purchase and sale of shoes in interstate commerce; \* \* \*.”

The Commission, very properly, struck from the Examiner's decision his erroneous findings in Paragraphs 41 and 42 in their entirety, but substituted therefor its own findings which, we submit, are equally erroneous (R. 46) (The reference in the Footnote on page 46 of the Record should be to Record Pages 68 and 74 instead of 73 and 79).

The opinion of the Commission, after discussing in some detail the Brown franchise plan and its operation, but without any discussion or consideration of the question as to whether or not the effect may be to substantially lessen competition or tend to create a monopoly in any line of commerce, substituted for the Examiner's findings its own findings above referred to, in part, as follows (R. 68):

“In short, from our review of the record, we find that respondent's operation of the franchise plan, which has effectively foreclosed its competitors from selling to a significant number of retail shoe stores, constitutes an unfair trade practice under Section 5 of the Federal Trade Commission Act.”

In other words, the Commission apparently concluded that the alleged foreclosure of competitors from selling to a significant number of retail shoe stores was alone a sufficient finding with respect to the substantial effect upon

competition. Then, as if to explain or justify this conclusion, the Commission continued (R. 68):

“Respondent’s practice of conditioning the benefits of membership in the plan to adherence to the restrictive terms of the franchise agreement for the purpose of foreclosing other manufacturers from selling to its franchisees is akin to the operation of tying clauses generally held as inherently anticompetitive.”

The Commission next referred to Brown’s contention that the legality or illegality of the plan could only be determined after an examination of the competitive impact of the plan, and rejected Brown’s contention, on the sole authority of its own decision in the case of *Luria Brothers and Company, Inc., et al.*, Commission Docket 6156 (1962), which, incidentally, is a Section 1 case involving an alleged attempt to monopolize, and is now pending on appeal in the Third Circuit Court of Appeals. Then, having rejected Brown’s contention, the Commission said (R. 69):

“If respondent’s argument were material to the issue presented by Count I of this complaint, it should be weighed in the light of the holding of the Supreme Court in *Brown Shoe Co., Inc. v. United States*, \* \* \* [wherein the Court ruled] the percentage of the market foreclosed by the vertical arrangement cannot itself be decisive and that it was, therefore, necessary to examine the various economic and historical factors in the relevant market to make the determination of whether the supplier-customer relationship is the type of arrangement which Congress sought to proscribe.”

But without making any such examination, the Commission continued with the bare statement (R. 69):

“Factually there is a close parallel between this proceeding and the merger action involving Brown’s acquisition of the G. R. Kinney Company.”



The Commission then said (R. 70):

"We have found that Brown's operation of the franchise plan constitutes an unfair trade practice violative of Section 5 of the Federal Trade Commission Act. We conclude, therefore, that Count I of the complaint has been sustained."

followed by the statement:

"Moreover, an examination of the market facts of the shoe industry, as developed in this record in the light of the *Brown Shoe* decision, persuades us that the prospective competitive impact of the franchise program is such that the standards of illegality under Section 3 and Section 7 of the Clayton Act, as amended, have been met."

Thus it seems to be clear that the Commission found that the franchise plan violated Section 5 of the Federal Trade Commission Act simply because it was akin to the operation of tying clauses generally held to be inherently anti-competitive.

But the meaning of its reference, without any discussion or explanation, to its "examination of the market facts of the shoe industry, as developed in this record in the light of the *Brown Shoe* decision", and its persuasion that the standards of illegality under Section 3 and Section 7 of the Clayton Act have also been met, is not clear. Does the Commission merely mean that it finds that a not insubstantial amount of commerce is affected and therefore the standards of illegality under Section 3 for a tie-in arrangement have been met, or does it mean that from its examination of the market facts it has concluded that the effect may be to substantially lessen competition in the shoe industry? If the latter, then the Commission "has not set forth the basis for its broad orders with sufficient clarity and completeness so that they can be properly reviewed", as suggested by Mr. Justice Goldberg in his dissenting



opinion in *Atlantic Rfg. Co. v. Federal Trade Commission*, 381 U. S. 357, l. c. 382. Then, the Commission, having first held that the standards of illegality under Section 3 did not have to be met in order to constitute a violation of Section 5, and having next, without stating how or why, said that the standards of illegality under Section 3 had been met, proceeded, in order to determine the nature and scope of the remedy to be applied, to (R. 70) "turn now to a consideration of the market facts of the shoe industry for that purpose."

The Opinion of the Commission was written by Chairman Dixon, and concurred in by Commissioner MacIntyre. Commissioners Anderson and Higgenbotham did not participate. Commissioner Elman "considering that the exclusive vertical arrangements shown by the record have the requisite competitive effects, *Brown Shoe Co. v. United States*, 370 U. S. 294, 323-324 (1962), concurs in the Commission's decision and order" (R. 83-4).

### 3. The Court of Appeals' Decision.

The scope and effect of the Court of Appeals' decision will be discussed more fully below in the course of the Argument.

### **SUMMARY OF ARGUMENT.**

The Brown franchise plan is not an exclusive dealing arrangement. It is merely a plan whereby Brown gives to the dealers on the plan certain services and benefits, in addition to those given to all dealers, so long as the dealers concentrate their business on Brown lines of shoes to the extent, on the average, of approximately 75% of their total requirements. Formerly Brown and the dealers signed a written franchise agreement, but this practice was terminated a number of years ago, and at least two-thirds of the dealers presently on the plan have signed no agreement.

The Commission charged in its complaint and attempted to prove that the plan is an exclusive dealing arrangement, and that the effect may be to substantially lessen competition. The Hearing Examiner recognized that if the market affected by the plan were compared with the national market the effect could not be said to substantially lessen competition. Instead he found that the substantiality of the effect of the plan should be measured by a comparison only with the retail shoe market in the trading areas where Brown franchise stores are located and on the basis of such comparison held that the effect was substantial (R. 28). The Commission properly struck from the Examiner's decision his findings with respect to the substantiality of the effect of the plan (R. 46). But it substituted its own equally erroneous one that it was not necessary to examine into the effect of the plan on competition because it is "akin to the operation of tying clauses generally held to be inherently anti-competitive" (R. 68-9), and, accordingly, unlawful under Section 5 of the Act. The Commission added, without discussion or explanation or any indication as to what standards of illegality were referred to, that "the prospective competitive

impact of the franchise program is such that the standards of illegality under Section 3 \* \* \* have been met" (R. 70).

The Court of Appeals reversed. At the outset the Court stated "Our primary question is whether there was adequate evidentiary basis for the Commission's finding that the Brown franchise program was an unfair method of competition and accordingly unlawful under § 5 of the Act" (R. 582-3). The Court determined that the plan met the test of *Federal Trade Commission v. Gratz*, 253 U. S. 421; that the plan could not be likened to a tying arrangement; that the decision of this Court in *Brown Shoe Co. Inc. v. United States*, 370 U. S. 294 was not controlling, and concluded "We hold that the Brown franchise stores program was not an unlawful tying arrangement and that there was a complete failure to prove an exclusive dealing agreement which might be held violative of § 5 of the Act" (R. 591).

While Section 5 of the Federal Trade Commission Act is a broad and flexible grant of authority, it does not authorize the Commission to prohibit methods of competition or practices which are not "deceptive" or "unfair". An exclusive dealing arrangement is not an unfair method of competition unless (a) the effect "may be to substantially lessen competition or tend to create a monopoly in any line of commerce," or (b) it is the kind of an arrangement which is inherently anti-competitive.

Under the Brown franchise plan there is no sale of any shoes "on the condition \* \* \* that the \* \* \* purchaser thereof shall not use or deal in the goods \* \* \* of a competitor of the \* \* \* seller." Shoes are sold to the dealers on the plan and the dealers who are not on the plan at the same prices and upon the same terms, and only on the condition that they be paid for in due course. Brown gives to the dealers on the plan certain extra benefits and services so long as they concentrate their business to the

extent, on the average, of 75% of their requirements, on Brown lines. But the dealers may, and sometimes do, withdraw from the plan at will and without notice and continue to purchase Brown shoes, to the extent they elect to do so, at the same prices and upon the same terms. Brown, however, must give at least thirty days' notice of its intention to withdraw the benefits of the plan from a dealer.

Since competitors of Brown are selling their shoes to five out of six of the dealers on the plan (Resp. Exs. 11-13; R. 564, 888-899, l. c. 890), and other manufacturers are selling, on the average, 25% of each dealer's requirements, the plan does not "foreclose" competitors of Brown from the share of the market represented by the dealers on the plan. Since the dealers are free to leave the plan at any time, such "foreclosure", if any, is but a temporary one.

The dealers who elect to go on the Brown franchise plan do so primarily because they are "sold" on Brown lines and believe that they can handle them at a profit (R. 293, 349, 352, 376, 384, 420, 424, 427, 454, 483, 489, 507). The services which Brown gives to the dealers who concentrate on Brown lines are needed by the dealers according to the Commission's own witness (R. 206, 211), and consist of merchandising advice and assistance which helps the small independent dealers to compete with the large chains. They are beneficial to the dealers in the plan because their rate of return on their investments average 16% compared with a rate of return of only 11.8% for all independent shoe dealers (R. 26). The reason why dealers on the plan voluntarily elect, in most instances, to remain on the plan and concentrate on Brown lines rather than on lines of Brown's competitors is that they find it good business to do so, and not because they are "foreclosed" from concentrating on lines of Brown's competitors.

The Brown franchise plan is not a tying arrangement nor akin to a tying arrangement. Under the plan Brown sells nothing but shoes. There is no sale of the services Brown gives to the dealers on the plan. Brown has no control or dominance over the services it renders, and hence has no power or leverage to force the purchase of its lines. There is no "economic leverage" in Brown's hands; there are no "direct and overt threats of reprisal"; no "utilization of economic power in one market to curtail competition in another"; and hence it cannot be said that "the effect of this plan is similar to that of a tie-in" as in *Atlantic Refining Co. v. F. T. C.*, 381 U. S. 357, 368-369, 371.

Even if the Brown franchise plan were literally an exclusive dealing or requirements arrangement, the effect of the plan would not be to substantially lessen competition because Brown's sales under the plan are less than 1% of all shoes sold in the United States (R. 28), and the dealers are free to withdraw from the plan at will. *Tampa Electric Co. v. Nashville Coal Co.*, 365 U. S. 320.

What the Commission seeks to do in this case under the authority of Section 5 of the Act is to prohibit a method of competition as being "unfair" which contains no element of deception, is not opposed to good morals, bad faith, fraud or oppression, is not inherently anti-competitive, is not a sale of goods on condition that the purchaser will not deal in the goods of a competitor, and without a showing that the effect of the plan, however it may be characterized, may be to substantially lessen competition or tend to create a monopoly in any line of commerce. Section 5, broad and flexible as it may be, grants no such authority to the Commission.

### **ARGUMENT.**

**I. The Brown Franchise Plan Does Not Involve a Market Foreclosure of the Type Proscribed by Section 3 of the Clayton Act, or of Any Type Other Than That Naturally Flowing From a Satisfied Customer's Reluctance to Shift to a Different Source of Supply.**

- A. THE COURT OF APPEALS DID NOT FAIL TO RECOGNIZE THE SCOPE OF THE COMMISSION'S AUTHORITY UNDER SECTION 5 TO FORESTALL PRACTICES RESULTING IN COMPETITIVE EFFECTS PROSCRIBED BY SECTION 3. INSTEAD, THE COURT OF APPEALS GAVE EXPLICIT RECOGNITION TO THE COMMISSION'S AUTHORITY BUT FOUND THAT THERE WAS NO EVIDENTIARY BASIS FOR THE COMMISSION'S FINDING AS TO THE ANTI-COMPETITIVE EFFECTS OF THE PLAN.

The Commission contends (Com. Br. pp. 15-16) that the Court of Appeals held that the Commission could not condemn the Brown franchise plan as an unfair method of competition under Section 5 solely because it meets the test of *Federal Trade Commission v. Gratz*, 253 U. S. 421, and that "the decision reflects an erroneously narrow reading of the reach of Section 5." We submit that the Commission's brief reflects an unreasonably narrow reading of the decision of the Court of Appeals.

The Court of Appeals was primarily concerned with the lack of evidentiary support for the Commission's finding and decision, rather than, as the Commission contends, with limiting the scope of the Commission's authority under Section 5 to forestall practices resulting in the competitive effects proscribed by Section 3 when there is adequate evidence of the probability of such competitive effects.

It was because the Court of Appeals determined that the Commission's finding "that the Brown franchise pro-

gram was an unfair method of competition and accordingly unlawful under § 5 of the Act” was *without adequate evidentiary basis* (emphasis added) that the Court of Appeals reversed, and not because it was undertaking to restrict the power of the Commission under Section 5 of the Act to deal with anti-competitive practices. Nor does the decision restrict or limit the power of the Commission beyond holding that the Commission’s findings of fact must have an adequate evidentiary basis.

Examining the opinion of the Court of Appeals we see that it noted (R. 581-2):

“When this case was first instituted on October 13, 1959, it obviously was the theory of the Federal Trade Commission that Brown’s franchise stores program was an unlawful exclusive dealing arrangement not violative of § 5 of the Act. It was so found by the Hearing Examiner and decided by him on that basis.”

The Court of Appeals then pointed out that the Commission refused to go along with the Hearing Examiner, saying (R. 582):

“The Commission struck such findings of the Examiner, stating:

“ ‘In short, from our review of the record, we find that respondent’s operation of the franchise plan, which has effectively foreclosed its competitors from selling to a significant number of retail shoe stores, constitutes an unfair trade practice under Section 5 of the Federal Trade Commission Act. Respondent’s practice of conditioning the benefits of membership in the plan to adherence to the restrictive terms of the franchise agreement for the purpose of foreclosing other manufacturers from selling to its franchisees is akin to the operation of tying clauses generally held as inherently anti-competitive.’ ”



Apparently the Commission found this kinship in the fact that the evidence showed that the relationship between Brown and the operators of the franchise stores was a "reasonably stable one," and because of such stability, rather than because of any unfairness or illegality, competitors were effectively foreclosed (R. 63).

Having reviewed, at some length, the pleadings, the evidence, the Examiner's decision, and the Commission's findings, the Court of Appeals indicated its recognition of the purpose of the Act by citing this Court's decision in the case of *Federal Trade Commission v. Raladam Co.*, 283 U. S. 643, 647, wherein it was said "The object of the Trade Commission act was to stop in their incipency those methods of competition which fall within the meaning of the word 'unfair'."

The Court of Appeals next expressly stated that the primary question with which it was concerned was merely the adequacy of the evidence to support the Commission's findings, saying (R. 582-3):

"Our primary question is whether there was adequate evidentiary basis for the Commission's finding that the Brown franchise program was an unfair method of competition and accordingly unlawful under § 5 of the Act."

Then, before undertaking to examine the evidence, the Court of Appeals, further emphasizing its opinion that its primary concern was with the adequacy of such evidence, pointed out that the Act itself provides, 15 U. S. C. A., § 45 (c), that the findings of the Commission as to the facts, if supported by evidence, shall be conclusive; and quoted (R. 583) from the opinion of this Court in the case of *Universal Camera Corp. v. N. L. R. B.*, 340 U. S. 474, 488, where it was held that a reviewing Court may set aside a Board decision,

“when it cannot conscientiously find that the evidence supporting that decision is substantial, when viewed in the light that the record in its entirety furnishes, including the body of evidence opposed to the Board’s view.”

Having thus defined the question with which it was concerned as being one with respect to the adequacy of the evidence, and having indicated its recognition of the limitations of a reviewing Court in passing upon the adequacy or substantiality of the evidence, the Court of Appeals proceeded to review such evidence.

In the course of such review the Court of Appeals pointed out that historically the validity of programs such as the Brown franchise program, which it had been carrying on for at least thirty years had never been challenged and that the Brown program met the test of *Gratz* (R. 584-5). But the Court of Appeals did not, as the Commission’s brief seems to contend, stop there and reverse solely because the test of *Gratz* had been met. Instead, the Court of Appeals then took up the Commission’s conclusion that the Brown franchise plan is akin to a tying arrangement, analyzed and distinguished the decisions cited by the Commission to support its position, and went on to examine the evidence and to point out the complete absence of any market foreclosure of Brown’s competitors other than that resulting from the fact that the operators of the Brown Franchise Stores, though free to leave the program at any time, voluntarily remain on the program because it helps to make them successful and profitable operators (R. 585-9). Thus the Court of Appeals said (R. 586):

“Retailers were free to abandon the arrangement at any time they saw it to their advantage so to do.”  
(R. 588):

“In Brown there was no ‘sale’ of the tying product (franchise services); there is no evidence that Brown’s

‘power or leverage’ in the tying product was such as to force the purchase of the ‘tied products’ (shoes). This case presents a situation where the seller, Brown, has no control or dominance over the tying product, services; consequently, the Brown franchise program is not an ‘effectual weapon’ to pressure buyers into taking the tied item, shoes.”

(R. 589):

“Brown’s franchise program was not the only program available to retailers. It did not give Brown the economic leverage to force the sale of its shoes. \* \* \* There is nothing specialized or unique about the services offered by Brown.”

(R. 589):

“Brown has not ‘acquired’ the retail outlets of those who join its program. The latter are free to leave it at any time.”

Having completed its review of the evidence and found it lacking, the Court of Appeals concluded (R. 591):

“We hold that the Brown franchise program was not an unlawful tying arrangement and that there was a complete failure to prove an exclusive dealing agreement which might be held violative of § 5 of the Act.”

Thus we submit the decision of the Court of Appeals does not reflect an erroneously narrow reading of the reach of Section 5 and is not in conflict with the decisions of this Court cited in the Commission’s brief, including the recent decision in the case of *Atlantic Rfg. Co. v. Federal Trade Commission*, 381 U. S. 357.

As the Court of Appeals pointed out (R. 588), there is here no tying arrangement, nor anything “akin” to, or having the “characteristics” of, a tying arrangement, nor does the plan produce effects similar to a tying ar-

rangement. We have here no "overt acts of coercion", no "direct and overt threats of reprisal", and no "utilization of economic power in one market to curtail competition in another", as in *Atlantic Rfg. Co., supra*.

We do not question the Commission's contention (Com. Br. 16) that Section 5 of the Federal Trade Commission Act is a broad and flexible provision, nor the recent statement by this Court in *Atlantic Refining Co., supra*, l. c. 367:

"In a broad delegation of power it empowers the Commission, in the first instance, to determine whether a method of competition or the act or practice complained of is unfair. The Congress intentionally left development of the term 'unfair' to the Commission rather than attempting to define 'the many and variable unfair practices which prevail in commerce. . . .' S. Rep. No. 592, 63d Cong., 2d Sess., 13. As the conference report stated, unfair competition could best be prevented 'through the action of an administrative body of practical men . . . who will be able to apply the rule enacted by Congress to particular business situations, so as to eradicate evils with the least risk of interfering with legitimate business operations.' H. R. Conf. Rep. 1142, 63d Cong., 2d Sess., 19. In thus divining that there is no limit to business ingenuity and legal gymnastics the Congress displayed much foresight. See *Federal Trade Comm'n v. Cement Institute*, 333 U. S. 683, 693 (1948)."

But Congress has not proscribed nor has this Court yet condemned mere "business ingenuity" or even "legal gymnastics". It is only "unfair" methods of competition, or "unfair or deceptive" acts or practices in commerce which are declared unlawful by Section 5 of the Federal Trade Commission Act, and even though the Commission is given the authority in the first instance to determine

whether a method of competition is unfair or acts or practices are unfair or deceptive, it is for the Courts, and this Court in particular, in the last analysis, to determine whether the methods, acts or practices condemned by the Commission as being unfair or deceptive are, as a matter of law, unfair or deceptive within the meaning of the Act. *Federal Trade Commission v. R. F. Keppel & Bro.*, 291 U. S. 304; *Federal Trade Commission v. Raladam Co.*, 283 U. S. 643.

Thus, this Court has held that Section 5 of the Act applies to (a) deceptive practices such as the use of deceptive statements in advertising—*Federal Trade Commission v. Raladam Co.*, *supra*; *Federal Trade Commission v. Raladam Co.*, 316 U. S. 149; *Federal Trade Commission v. Mary Carter Paint Co.*, 382 U. S. 46; deceptive television advertising—*Federal Trade Commission v. Colgate-Palmolive Co.*, 380 U. S. 374; a misleading use of the words "Red Cross"—*Federal Trade Commission v. A. P. W. Paper Co., Inc.*, 328 U. S. 193, 199; (b) violations of the Sherman and Clayton Acts—*Federal Trade Commission v. Cement Institute*, 333 U. S. 683; *Federal Trade Commission v. Motion Picture Adv. Serv. Co.*, 344 U. S. 392; *Fashion Originators' Guild v. Federal Trade Commission*, 312 U. S. 457, an arrangement which, although not technically a tying arrangement within the prohibition of Section 3, had an effect similar to that of a tie-in. *Atlantic Rfg. Co.*, *supra*; and (c) methods of doing business opposed to good morals such as a lottery or gambling device which encourages gambling among children—*Federal Trade Commission v. Keppel & Bro.*, *supra*; *Federal Trade Commission v. Gratz*, *supra*.

On the other hand, neither this Court nor, to the best of our knowledge, any Court has held that methods and acts which are not "unfair" or "deceptive" within the broad meaning of those terms as used in the cases such

as those cited above are within the coverage of Section 5 of the Act.

In the present case we have nothing comparable to any methods ever held by this or any other Court to be "unfair". It is not suggested that there are any "deceptive" practices. The only thing about the Brown franchise plan that is criticized or sought to be condemned is Brown's practice of granting the benefits of the plan only so long as the dealers elect to concentrate their business on Brown lines and purchase, on the average, approximately 75% of their requirements from Brown. But they are absolutely free to leave the plan whenever they see fit to do so, whether because a salesman for a competing manufacturer persuades them that they can do better concentrating upon such other manufacturer's shoes or because they come to that independent conclusion without such sales efforts. As the Court of Appeals has expressly held (R. 588), Brown has no "power or leverage", "no control or dominance" over the benefits and services which it was granting under the plan. There is nothing unique about them which could not be furnished by any other manufacturer if it elected so to do. They are highly beneficial to the dealers on the plan, and because they are beneficial, tends to make them "loyal" customers of Brown. It is apparently this loyalty that the Commission complains of, as indicated by its finding, in answer to Brown's contention that dealers are free to leave the plan at any time, that "the relationship between Brown and its franchisees is a reasonably stable one" (R. 63). But the fact that Brown's relationship with its customers on the franchise plan is a reasonably stable one, does not make the plan "unfair".

The Commission says (Com. Br. p. 17) that the Court of Appeals did not disturb the Commission's findings as to the anti-competitive effect of Brown's franchise plan. It appears that the Commission has misread the Court of



Appeals' decision. What the Court of Appeals did do was to hold that there was a lack of evidentiary support for the Commission's finding as to any anti-competitive effects of the plan—that there was a complete absence of proof of any market foreclosure of Brown's competitors other than that resulting from the fact that the dealers operating under the plan, though free to leave the program at any time, voluntarily elect to remain on the program because they believe it is profitable and good business to do so.

B. BROWN'S FRANCHISE PLAN IS NOT AN EXCLUSIONARY ARRANGEMENT OF THE TYPE PROSCRIBED BY SECTION 3. INSTEAD, IT IS, IN SUBSTANCE, MERELY AN ARRANGEMENT WHEREBY CERTAIN ADDITIONAL BENEFITS ARE GIVEN TO THE DEALER SO LONG AS HE CONCENTRATES ON BROWN LINES.

The Brown franchise plan arrangement does not constitute "an exclusionary arrangement of the type proscribed by Section 3," nor, in essence, is it an exclusionary arrangement of any type. There is no "sale or contract for sale" of shoes "on the condition, agreement or understanding" that the purchaser "shall not use or deal in" the shoes "of a competitor or competitors" of Brown. Shoes are sold by Brown under the plan at the same prices and upon the same terms and conditions that they are sold to all independent retail dealer customers of Brown, the only condition being that they be paid for in due course. It is merely an arrangement whereby so long as the dealer concentrates his business within the grades and price lines of Brown shoes, i. e., carries an adequate and representative stock of such shoes and handles them in a representative manner, Brown will give him certain additional services and benefits, some of which are not available to customers of Brown who do not so concentrate their business. It is not an exclusive dealing arrangement or requirements contract, but, at the most, an arrangement



for concentration of an unspecified portion of the dealer's business within Brown lines so long and only so long as the dealer elects to do so.

(a) **Exclusive dealing and requirements contracts are the same in legal effect.**

An exclusive dealing contract and a "requirements" contract are, in legal effect, the same. In the case of *Standard Oil Co. v. U. S.*, 337 U. S. 293, the contracts involved were "requirement contracts" which contained no express condition that the purchaser should not use or deal in the goods of a competitor, but they were held to violate Section 3 of the Clayton Act, and, as pointed out by the Court of Appeals in the case of *Tampa Electric Company v. Nashville Coal Company*, 276 F. 2d 766, 777, a "requirements contract" does not expressly contain the "condition, agreement, or understanding" that the purchaser will not use or deal in the goods of a competitor, but the actual result of a total requirements contract is to prevent the purchaser from using or dealing in the goods of a competitor irrespective of the absence of the specific words contained in the statutes.

(b) **Exclusive dealing and requirements contracts are not inherently anticompetitive nor unlawful per se.**

While the Brown franchise plan is not an exclusive dealing or requirements contract, but only an arrangement for benefits to be given so long as the dealer concentrates on Brown lines, it would not be inherently anticompetitive or unlawful per se or within the proscription of Section 3 even if it were.

This was pointed out in *Tampa Electric Co. v. Nashville Coal Co.*, 365 U. S. 320, where it was said l. c. 333:

"It may well be that in the context of antitrust legislation *protracted* requirements contracts are suspect,

but they have not been declared illegal *per se*. (Emphasis added.) Even though a single contract between single traders may fall within the initial broad prescription of the section, it must also suffer the qualifying disability, tendency to work a substantial—not remote—lessening of competition in the relevant competitive market.”

Again this Court said in *Brown Shoe Co.*, *supra*, with respect to vertical arrangements, l. c. 329-331:

“A most important such factor to examine is the very nature and purpose of the arrangement. \* \* \* Thus, for example, if a particular vertical arrangement, considered under § 3, appears to be a *limited term* exclusive-dealing contract, the market foreclosure must generally be significantly greater than if the arrangement is a tying contract before the arrangement will be held to have violated the Act. \* \* \* Of course, the fact that *requirement contracts* are not *inherently anticompetitive* will not save a particular agreement if, in fact, it is likely ‘substantially to lessen competition, or to tend to create a monopoly.’” (Emphasis added.)

(c) **A manufacturer has the right to select dealers who will concentrate on his products if there are no prohibited anticompetitive effects.**

As said by the Court in the case of *Walker Distributing Co. v. Lucky Lager Brewing Co.*, 323 F. 2d 1, 7 (1963):

“We know of no case that holds that contracts between a manufacturer and distributors of his product whereby the latter agree to act as exclusive distributors, that is, to handle his product alone, are illegal *per se*. Most of the cases that have considered the question hold or say that such a contract is not, without more, illegal either under the Sherman Act or the

Clayton Act. (See *Ace Beer Distrib., Inc. v. Kohn, Inc.*, 6 Cir., 1963, 318 F. 2d 283, 286-287 (Sherman and Clayton Acts); *Timken Roller Bearing Co. v. F. T. C.*, 6 Cir., 1962, 299 F. 2d 839 (Clayton Act); *Packard Motor Car Co. v. Webster Motor Car Co.*, 1957, 100 U. S. App. D. C. 161, 243 F. 2d 418, 420 (Sherman Act); *Schwing Motor Co. v. Hudson Sales Corp.*, 4 Cir., 1956, 239 F. 2d 176 (Sherman and Clayton Acts); *Leo J. Meyberg Co. v. Eureka Williams Corp.*, 9 Cir., 1954, 215 F. 2d 100 (Clayton Act); *Nelson Radio & Supply Co. v. Motorola, Inc.*, *supra*, 200 F. 2d at 914 (Sherman and Clayton Acts; no conspiracy shown). Compare *McElhenney Co. v. Western Auto Supply Co.*, 4 Cir., 1959, 269 F. 2d 332, 337-338 (Sherman and Clayton Acts)).”

Such an agreement between a manufacturer and his dealers becomes illegal only if the effect would be “to substantially lessen competition or tend to create a monopoly in any line of commerce.”

It has long been and, we submit, still is the law that a manufacturer has the right to select those dealers who will not only purchase and carry, if not an exclusive, at least an adequate and representative stock of the manufacturer's merchandise, but will also, by sound merchandising, through local advertising, effective selling, and otherwise, sell and continue to sell at least a reasonable quantity of such products. This principle has been most recently and clearly enunciated in the case of *Timken Roller Bearing Company v. F. T. C.*, 299 F. 2d 839 (1962), cert. den. 371 U. S. 861, 1. c. 842:

“Perhaps the rule has best been stated for our purposes in the following language:

“The anti-trust laws do not prohibit a manufacturer or distributor from selecting dealers who will devote their time and energies to selling the former's prod-

ucts and a manufacturer is not compelled to retain dealers having divided loyalties adverse to the interests of the said manufacturer or distributor.' *McElhenny Co., Inc. v. Western Auto Supply Co.*, 167 F. Supp. 949, at page 954, affirmed 269 F. 2d 332 (C. A. 4).

"A seller has the right to select his own customers. This right is protected by the Clayton Act, itself. 15 U. S. C. A., § 13. The right has been recognized by the authorities, even where it was not expressly provided for by the statute. *United States v. Colgate & Company*, 250 U. S. 300, 39 S. Ct. 465, 63 L. Ed. 992; *Times-Picayune Publishing Company v. United States*, 345 U. S. 594, 73 S. Ct. 872, 97 L. Ed. 1277; *Naifeh v. Ronson Art Metal Works*, 218 F. 2d 202 (C. A. 10). To uphold the order entered by the Commission in this case would be, in effect, to destroy this right. Here there has been proved no 'condition, agreement or understanding' such as has been made unlawful by the Act. Nor has there been proved any consistent policy of exclusive dealing as was alleged in the Complaint."

In the present case the evidence shows not an exclusive dealing or requirements arrangement but only an arrangement whereby additional benefits are given so long as the dealers carry adequate and representative stocks of Brown's shoes and do a reasonably good merchandising job and the evidence fails to show the claimed substantial anti-competitive effects.

**(d) The Brown franchise plan results in no actual foreclosure of competitors.**

The evidence shows, without contradiction, that everyone of Brown's competitors represented by the six witnesses produced by the Commission was actually selling

shoes to from 3 to 68 stores on the Brown franchise plan (Resp. Ex. 11-13, R. 564, 888-895, 890-4). If one manufacturer could sell to 68 stores it would appear that the Brown franchise plan, in and of itself, would not foreclose the others from doing likewise.

The evidence also showed, without contradiction, that 5 out of 6 of 573 dealers on the Brown franchise plan were carrying shoes of at least one, and, in some instances, more lines competing directly with Brown lines (Resp. Ex. 11-13; R. 564, 888-899, l. c. 890). Nor is there any dispute about the fact that, on the average, 25% of the shoes in every franchise dealer's store was purchased from one or more other manufacturers.

Thus, Brown's competitors actually had their shoes in Brown franchise stores, and salesmen were calling upon and making sales to Brown franchise dealers. Such sales may not have been in the quantities which Brown's competitors would like, just as Brown sales are not in the quantities it would like, but Brown's competitors were not "foreclosed".

**(e) Temporary foreclosure of competitors is not unlawful per se and Brown's franchise plan, at the most, results in only temporary and limited foreclosure.**

This Court has pointed out in *Brown Shoe Co. v. United States*, supra, at p. 324:

"Every *extended* vertical arrangement by its very nature, *for at least a time*, denies to competitors of the supplier the opportunity to compete for part or all of the trade of the customer-party to the vertical arrangement. However, the Clayton Act does not render unlawful all such vertical arrangements, but forbids only those whose effect 'may be substantially to lessen competition, or to tend to create a monopoly'

‘in any line of commerce in any section of the country’ ”. (Emphasis added).

In this section of the Commission’s brief, and, for that matter, throughout the Commission’s brief, the Commission overlooks, or seeks to ignore, the fact that the arrangement between Brown and the dealers on the Brown franchise program is terminable at will—that it is merely an arrangement whereby certain additional benefits are given to the dealer so long as he elects to concentrate his purchases on Brown lines.

Any purchase by any dealer from any manufacturer, whether it be of a single pair of shoes, a dozen pairs, a complete line, 75% of his requirements, 100% of his requirements, at any one time, preempts, pro tanto, so much of the market and forecloses any other manufacturer from selling that particular dealer a comparable pair or number of pairs of or line or lines of shoes. Every time a dealer purchases, whether from one or a half a dozen manufacturers, his inventory of shoes for the Spring or the Fall season, as the case may be, so much of the market has been preempted and all other manufacturers are foreclosed from that particular section of the market. But such preemption and such foreclosure is temporary. When the time comes to replenish his stock on hand, the temporary preemption and foreclosure is at an end, and that portion of the market is open to every manufacturer producing shoes of the kind, grade, pattern and price handled by that dealer.

The arrangement under the Brown franchise program is not an “extended” one but of the most temporary character. When the average dealer on the plan purchases at any one time 75% of his requirements from Brown, that portion of his market is preempted and other manufacturers are foreclosed so long and only so long as the dealer elects to replace them with addi-



tional purchases from Brown. As long as he is doing well and making good money with Brown shoes, with the advice and assistance and guidance of Brown's field men, he will be a poor prospect for the salesmen representing competing manufacturers, and, as the Commission found, the relation will be a reasonably stable one. But whenever he is dissatisfied with the results he is getting from Brown shoes, or from any line of Brown shoes he may be carrying, or whenever a salesman of another manufacturer can sell him on the quality, style, price or performance of other shoes, he is not only free to buy them, but, on occasions, will do so. What the Commission's six witnesses from competing manufacturers were really complaining of is the fact that, generally speaking, the dealers on the Brown franchise program are not dissatisfied but do well with Brown shoes, feel that they are doing better than they could with competing brands, and that it is difficult for their salesmen to persuade them to the contrary. But such an arrangement is not the type and does not have the effect of an arrangement prohibited by Section 3.

**(f) The Brown franchise plan, at the most, results in limited temporary foreclosure, but not sufficient in quantity to substantially lessen competition.**

As will be pointed out more specifically below, in answer to pages 31-34 of the Commission's Brief, any foreclosure of competition by the Brown franchise plan is not only limited and temporary but amounts to less than one percent of the relevant market and hence not sufficient to substantially lessen competition.

**(g) Answers to various statements in the Commission's brief.**

The Commission seems to argue that the evil in the Brown franchise plan is that Brown will not give the



dealer the benefits of the plan unless he purchases 75% of his requirements from Brown; that Brown should give the same benefits to the dealer who purchases only 50% or 40% or even 5% of his requirements from Brown. Certainly the Brown franchise plan should not be condemned because Brown does not give all of the services given under the plan, without charge and at considerable expense, where the small volume of business done will not justify such additional expense.

The Commission says (Com. Br. p. 18) that the meaning of the Court of Appeals' finding that "there was a complete failure to prove an exclusive dealing agreement which might be held violative of § 5" is not entirely clear. We submit that the Court of Appeals' finding is entirely clear and could not be clearer. It means exactly what it says.

The Commission says (Com. Br. p. 18) that there is "no real dispute" as to the meaning of the undertaking of each franchisee to carry "no lines conflicting with Brown Division Brands of the Brown Shoe Company". Apparently there is a very real dispute as to the meaning of this language. As pointed out above, it does not obligate retailers not to purchase shoes of the types and grades manufactured by Brown from manufacturers other than Brown, but only not to carry conflicting "lines". Once a dealer undertakes to "concentrate" on Brown lines, any supplemental agreement not to carry conflicting lines is redundant. He cannot concentrate on Brown lines and not concentrate on Brown lines at the same time. The Commission treats the undertaking found in the written agreements and the policy promulgated in the plan where there are no agreements as being a contract obligation, enforceable for some specific or perhaps unlimited period of time; whereas, in fact, it is nothing more than a practice or policy followed so long and only so long as the dealer, exercising his own free and independent judg-

ment, sees fit to go along. It is true that the Commission found that in practice the agreement resulted in the preemption by Brown of 75% of the requirements of its franchise dealers. But it is also true that the Court of Appeals concluded, as it was forced to conclude on the record, that this finding of the Commission was without evidentiary support. It is not undeniable that Brown obtained exclusive dealing agreements with its retailers. On the contrary, even with those dealers who have signed written agreements it obtained nothing more than agreements to concentrate on Brown lines, to buy from Brown, on the average, 75% of the dealer's requirements, as long as the dealer sees fit to continue such purchases. Such agreements are not the type and do not have the effects of agreements proscribed by Section 3.

The Commission says (Com. Br. p. 18) that the Court of Appeals was plainly in error if "the Court of Appeals meant that the agreement which was proved was one which under no set of surrounding circumstances could be held unlawful". We submit that neither the agreement nor the policy, since it could be terminated by Brown at any time upon thirty days' notice and by the dealer at any time and without notice, could be held to be unlawful under any set of surrounding circumstances. The Commission is in error in saying (Com. Br. p. 19) that the Court of Appeals did not reject the Commission's finding that by the operation of the plan Brown had effectively foreclosed its competitors. On the contrary, the Court of Appeals did reject such finding of the Commission, although not in those precise words, when it held, after reviewing the evidence, "that there was a complete failure to prove an exclusive dealing agreement which might be held violative of § 5 of the Act." If there was a complete failure to prove an exclusive dealing agreement which might be held violative of Section 5 of the Act, there was a complete failure to prove an agreement foreclosing Brown's competitors.

We concede that the Commission's opinion was concerned, or purported to be concerned, with the impact of the Brown franchise plan on competition and not on the label it carries, and that its analysis of the facts, to the limited extent it made an analysis, was directed to what it considered to be the effect of the plan in foreclosing competition, although, as we have elsewhere pointed out, we contend, and the Court of Appeals held, there was no evidentiary support for the Commission's conclusion that the effect of the plan was to foreclose competition. Of course, we do not deny that exclusionary arrangements as such fall under Section 5 if they violate the policies of Section 3.

But we do not agree that *Atlantic Refining Company*, supra, is authority for the Commission's contention that the Brown franchise plan has consequences proscribed by Section 3 of the Clayton Act, although not precisely within the bounds of that Section, and thereby violates Section 5. We have here none of the improper practices and none of the adverse consequences found in *Atlantic Refining Company*. There have been no "direct and overt threats of reprisal", no "utilization of economic power in one market to curtail competition in another"; and no "actual threats and coercive practices"; and the effect of the Brown franchise plan is not similar or akin to that of a tie-in.

While we agree with the Commission's definition (Com. Br. p. 19) of an exclusive dealing arrangement, we disagree with the Commission's contention (Com. Br. p. 20) that the Brown franchise plan "falls clearly within the policy of Section 3," if by the language quoted the Commission means that any "exclusive dealing" arrangement or policy, or any "requirements" contract violates Section 3, regardless of the length of the term of the arrangement, policy or contract, whether or not it is terminable at will, regardless of the extent of commerce

affected, whether or not it be inherently anticompetitive, and whether or not the effect may be "to substantially lessen competition or tend to create a monopoly in any line of commerce."

We agree that those of the services and benefits furnished by Brown under the Brown franchise plan which are not furnished to all of the customers of Brown are furnished only so long as the dealer concentrates his business within the grades and price lines of Brown shoes, and we also agree that they are of value to the retailer. But there is no actual foreclosure of competition resulting from the Brown franchise plan and, at the most, none other than the temporary foreclosure discussed above, which results from any purchase by any dealer from any manufacturer.

The Commission seems to contend (Com. Br. p. 21) that the Commission in its decision found that the dealer's adherence to the plan was not purely voluntary. If the Commission did so find, then such finding was entirely without evidentiary support, because the record shows, without contradiction, that the dealers were not only free to leave the plan, but did leave the plan, whenever they saw fit to do so. The benefits of the plan were merely inducements, not compulsions, for the dealers to remain on the plan and concentrate their purchases on Brown's lines. It is true that the Commission's conclusion that the plan is an unfair method of competition under Section 5 is based squarely and solely upon Brown's practice of not continuing to give all of the benefits of the plan to dealers who elected not to concentrate on Brown lines, but, as pointed out above and below, this was not sufficient to make the practice an "unfair" method of competition under Section 5.

As we have indicated above, and will point out more specifically below with respect to the absence of any sub-

stantial adverse effect upon competition, even if the written agreements and Brown's policy under the plan called for each dealer to purchase 100% of his requirements from Brown, the agreements and the plan would not meet the standards of illegality under Section 3, and would not constitute an unfair method of competition under Section 5 of the Federal Trade Commission Act.

**II. Regardless of the History and Structure of the Shoe Industry There Is No "Foreclosure" Effected by Brown's Franchise Program Other Than the Foreclosure Which Results So Long and Only So Long as Brown's Customers Are Satisfied, for Which There Is Ample Economic Justification. Accordingly, the Commission Was Not Justified in Finding That the Program Violated the Policy of Section 3 of the Clayton Act.**

We have shown above that neither the written agreement, nor the practice and policy of Brown under the Brown franchise program where there is no written agreement, is the type of vertical arrangement to which Congress addressed itself in Section 3 of the Clayton Act. It is true, as pointed out above, that the Commission, without an examination of the market facts of the shoe industry, and without consideration of the standards of illegality other than a statement that such standards were not applicable, and after stating that there was no necessity for any such finding, found that the prospective competitive impact of the franchise program is such that the standards of illegality under Section 3 have been met. We agree that the question before the Court of Appeals and now before this Court is whether that finding has warrant in the record and a reasonable basis in law, and submit that, as the Court of Appeals expressly found, it has not.

We agree that the decision of this Court in *Brown Shoe Co. v. United States*, supra, held that the industry had experienced a history of progressive concentration and foreclosure of competing manufacturers by the ownership of retail outlets, and that this Court held that Brown was a leading force in such history. But we deny that no economic justification could be shown by Brown for the requirement that dealers concentrate, on the average, 75% of their business in Brown lines if they are to receive the extra benefits and services under the plan; we deny that the Brown franchise plan was a major factor or any factor in foreclosing markets to competitors, and contend that an examination of the factors cited by the Commission (Com. Br. 22) will demonstrate that the provisions of the plan are not repugnant to the standards of the Clayton Act, and, accordingly, may not be held to be unlawful under Section 5 of the Federal Trade Commission Act.

A. ANY TREND TOWARD CONCENTRATION AND VERTICAL INTEGRATION IN THE SHOE INDUSTRY IS IRRELEVANT.

The Commission contends (Com. Br. pp. 22-27) at some length that there has been a trend toward concentration and vertical integration in the shoe industry, basing its contention primarily upon the findings of this Court in *Brown Shoe Co.*, supra. We will not, of course, undertake to challenge or refute such findings except to point out (a) that this Court was not then concerned with the legality of the Brown franchise plan nor with anything except the effect upon competition of the acquisition by Brown of G. R. Kinney Co., Inc., and (b) that any history of concentration and vertical integration in the shoe industry is irrelevant to the question as to whether or not the Brown franchise plan constitutes an unfair method of competition in commerce in



violation of Section 5 of the Federal Trade Commission Act. The Court of Appeals was clearly correct in its conclusion (R. 589) that "the only similarity between this case and the previous *Brown Shoe Co.* decision, *supra*, is the fact that the same corporation is involved in both disputes."

**B. THE SUFFICIENCY OF ECONOMIC JUSTIFICATION.**

There can be no quarrel with the Commission's statement (Com. Br. 27-28) that "not all vertical arrangements are equally injurious to competition," and that "requirements contracts 'may well be of economic advantage to buyers as well as to sellers, and thus indirectly of advantage to the consuming public.' " That is the case here.

**(a) The economic justification for the Brown franchise plan.**

It will be seen that the Brown franchise plan is not only of economic advantage to Brown but to the dealers on the plan, and indirectly to the consuming public.

As for Brown, the plan, insofar as it helps to keep its dealers on the plan in business, financially successful, and able to sell more shoes to the consuming public, is of obvious economic advantage. As long as such dealers can sell Brown shoes at a satisfactory profit to themselves, they will tend to continue to buy from Brown. As for the dealers, the fact that, as found by the Commission (R. 591) and by the Court of Appeals (R. 72), their average rate of return on investment is 16%, or some 35% better than the industry average of 11.8%, should be ample evidence of the economic advantage to them. Again the Commission concedes (Com. Br. p. 28) that "To be sure, there are unquestionably real advantages and economies in making available to retailers the services which Brown supplies under its Brown franchise program."



As for the public generally, the services given by Brown to its dealers on the plan, aiding them to be successful in their respective undertakings, to be financially prosperous and stay in business, help to preserve, pro tanto, the small local businessman against the vigorous competition of the chain stores. They have the same salutary effect upon small independently owned retail stores that Congress sought to accomplish through the Small Business Act, 15 U. S. C. A., § 631, et seq., and as expressed in S. R. No. 1714, U. S. Code Congressional and Administrative News, 1958, p. 3071, where it is said that "The Small Business Administration has the following principal functions: \* \* \* To provide technical and managerial aids to small business." This Court has pointed out in *Brown Shoe Co.*, supra, at p. 333:

"Congress was desirous of preventing the formation of further oligopolies with their attendant adverse effects upon local control of industry and upon small business. Where an industry was composed of numerous independent units, Congress appeared anxious to preserve this structure."

In the case of *Standard Oil Co. v. United States*, 337 U. S. 293, it would appear that Mr. Justice Douglas felt so strongly about the necessity of preserving the small independent businessman that he dissented because in his opinion the effect of the majority opinion would be to eliminate the independent filling station operators saying, l. c. 321:

"But there will be a tragic loss to the nation. A small, independent businessman will be supplanted by clerks. Competition between suppliers of accessories (which is involved in this case), will diminish or cease altogether. The oil companies will command an increasingly larger share of both the wholesale and the retail markets."

Instead of being condemned as unlawful, the Brown franchise plan should be encouraged because of its beneficial effects "upon the economic way of life sought to be preserved by Congress." *Brown Shoe Co.*, supra, l. c. 333.

**(b) Answers to various statements in the Commission's brief.**

The Commission would have Brown charge retailers for its services instead of giving them free, a suggestion which bears no relationship to the realities of the shoe industry or any other comparable industry. Even if Brown should take the Commission's advice and attempt to go into the business of advising, for a fee, retailers how to sell the shoes of other manufacturers, it would not be feasible for it to do so because its field men could not, as a practical matter, advise with respect to the proper merchandising of other manufacturer's shoes because of their lack of familiarity with their lines, the performance of particular models, etc. (R. 167-8, 268, 273, 301, 309, 319). Nor would the dealers be willing to pay Brown for advice with respect to the merchandising of other manufacturer's shoes when they feel that such advice, even when offered free, is only beneficial when they concentrate on Brown lines (R. 268).

It is true that there is no reason why the advantages, or most of them, of line concentration cannot be obtained by a retailer who purchases men's shoes from manufacturer A, women's shoes from manufacturer B, and infant's shoes from manufacturer C. It is also true that the great majority by far of all retailers follow this practice of line concentration, and do not purchase all of their lines from Brown or from any other single manufacturer. If they did not follow the policy of line concentration they would not remain in business very long.

But the Commission seems to argue that Brown should offer its services free to dealers who purchase any one of

Brown lines, rather than only to those who concentrate on Brown lines. The answer to this argument is given by one of the Commission's own witnesses, William Edward Freeman, who pointed out (R. 206), that although dealers need these services, his company, manufacturing only men's shoes, which constitutes only approximately 20% of a typical family shoe store's volume, could not afford to give such services for the entire operation. By the same token, neither can Brown afford to give these services, which are costly, to a dealer who purchases only 20% of his requirements from Brown, even if such services would be of any practical value in merchandising other manufacturer's shoes.

Brown does not contend that it is necessary that complete line concentration, i. e., concentration on one manufacturer's line of men's, women's and children's shoes is the only way in which a dealer can operate and be successful. Nor does it contend that dealers have to be, nor are they, held to the line by contractual agreement. All Brown does under the plan is to say to the dealers, in effect, that if you will concentrate on Brown lines, and do a good job with them, then so long as you do so we will help you. Of course, dealers do not need restrictions on their freedom of choice in order to achieve efficiency. But if they believe that the inducements offered tend to produce efficiency, and hence more profit, they may be willing to exercise their freedom of choice to concentrate on Brown lines.

It would seem that the Commission is contending (Com. Br. p. 30) that the burden is upon the manufacturer or producer of goods to "justify" the Brown franchise plan because it is claimed to be an exclusive dealing contract. We do not understand that to be the law, since, as we have pointed out above, they are not unlawful per se. Section 3 does not proscribe exclusive dealing contracts per se, but declares them to be unlawful if and only if

“the effect of such \* \* \* contract \* \* \* may be to substantially lessen competition or tend to create a monopoly in any line of commerce.” When the prohibited effect has been found to exist, this Court has struck down exclusive dealing contracts. *Standard Oil Co. v. U. S.*, 337 U. S. 293. But where this Court has concluded that an exclusive dealing or “requirements” contract does not have the prohibited effect, then it has ruled that such an agreement does not fall within the proscription of Section 3. *Tampa Electric Company v. Nashville Coal Company*, 365 U. S. 320 (1960). A different rule applies with respect to contracts involving tie-in or arrangements having effects similar to that of a tie-in. In such cases it is only necessary that a not insubstantial portion of commerce is affected. *Atlantic Rfg. Co. v. Federal Trade Commission*, 381 U. S. 357 (1965); *United States v. Loew’s, Inc.*, 371 U. S. 38 (1962); *International Salt Co. v. United States*, 332 U. S. 392 (1947).

The Commission in its brief (Com. Br. p. 30) appears to concede that there is no evidentiary support for its contention that the effect of the Brown franchise plan may be to “substantially lessen competition,” and attempts to bring itself within the rule applicable to tie-in arrangements by repeating the statement from the decision of the Commission (R. 68) that the operation of the Brown franchise plan “is akin to the operation of tying clauses generally held as inherently anti-competitive,” thereby seeking to avoid the necessity of showing a substantial lessening of competition. But the Court of Appeals in its decision, to which we refer for a detailed analysis of this contention (R. 585-9), has held it to be completely without merit.

C. THERE IS NO SUBSTANTIAL ADVERSE EFFECT ON COMPETITION.

However, the Commission, in the final portion of its brief (Com. Br. pp. 31-34), seems to abandon the proposi-

tion that it has shown that the Brown franchise plan is akin to the operation of tying clauses generally and, instead, to contend that there is evidentiary support for the proposition that the effect of the plan is to substantially lessen competition in the shoe industry. It seems to agree with the proposition in quoting from the decision of this Court in *Brown Shoe Co.*, supra, that it is "necessary to undertake an examination of various economic and historical factors in order to determine whether the arrangement under review is of the type Congress sought to proscribe." But we have pointed out at some length above that the plan is not of the type proscribed by Section 3, absent a showing of the requisite anticompetitive effects. The examination of the economic and historical factors is only required to determine such effects. The Commission concludes (Com. Br. pp. 31-32) that a "Review of those factors (see pp. 22-27 supra), which the court of appeals completely ignored, leads to the conclusion reached by the Commission, and by this Court before it in *Brown Shoe*, that the preemption by Brown of more than 700 retailers as its exclusive dealers tends substantially to lessen competition".

But the facts are (a) that the Court of Appeals did not completely ignore but distinguished the decision of this Court in *Brown Shoe*; (b) that the Commission in its decision did not come to the considered conclusion that the Brown franchise plan tends to substantially lessen competition (R. 68-69); (c) that this Court did not in *Brown Shoe* reach the conclusion "that the preemption by Brown of more than 700 retailers as its exclusive dealers tends substantially to lessen competition", nor was that issue before the Court; (d) the Brown franchise plan has not foreclosed or preempted, within the meaning of Section 3 of the Act, the market represented by the retailers on the plan; and (e) the effect of the Brown franchise plan is not sufficient to substantially lessen competition.

**(a) The Court of Appeals did not ignore but distinguished the decision of this court in *Brown Shoe Co.***

The Court of Appeals was presented with the same argument that is presented here, with respect to the interpretation to be given to footnote 66, pp. 337-8, to this Court's opinion in *Brown Shoe Co.*, supra. But instead of ignoring the argument met it head on and, after discussion, concluded (R. 589), "The only similarity between this case and the previous *Brown Shoe Co.*, decision, supra, is the fact that the same corporation is involved in both disputes".

**(b) The Commission did not come to the considered conclusion that the Brown franchise plan tends to substantially lessen competition.**

As pointed out above, the Commission came to the conclusion that the Brown franchise plan constitutes an unfair method of competition within the provisions of Section 5 because it is "akin to the operation of tying clauses generally held as inherently anticompetitive"; rejected Brown's contention that it was necessary to examine into the substantiality of its effect upon competition; and repeated the statement that it had found the plan to be violative of Section 5. Then, only as an afterthought, without analysis, discussion or explanation, and without indicating which standards of illegality under Section 3 it was referring to, merely stated that "the standards of illegality under Section 3 \* \* \* of the Clayton Act, as amended, had been met" (R. 70).

**(c) This Court did not in *Brown Shoe Co.* reach the conclusion that the Brown franchise plan tends substantially to lessen competition.**

The Commission seems to be placing its primary reliance in this case upon this Court's decision in *Brown Shoe Co.*, supra, citing it no less than fourteen (14) times



in its brief. But the only thing found in *Brown Shoe Co.* which could even remotely be said to touch upon the Brown franchise plan is the footnote number 66, pp. 337-8, which merely says that Brown was able to exercise sufficient control over the dealers on the plan "to warrant their characterization as 'Brown' outlets for the purpose of measuring the share and effect of Brown's competition at the retail level" (Emphasis added).

However, we are dealing here with the effect of the plan at the manufacturing, not retail, level. The issue as to the legality of the plan was not before the Court.

**(d) The effect of the Brown franchise plan is not sufficient to substantially lessen competition.**

As pointed out above, under the Brown franchise plan there is no sale of shoes "on the condition, agreement, or understanding" that the purchaser "shall not use or deal in" the shoes "of a competitor or competitors" of Brown. It is merely an arrangement whereby so long as the dealer concentrates his business within the grades and price lines of Brown shoes, Brown gives him certain services and benefits not available to customers of Brown who do not so concentrate. In practice the concentration amounts, on the average, to approximately 75% of the dealer's business. The dealer is free to withdraw from the plan, and sometimes does, without notice whenever he sees fit to do so. There is no actual foreclosure of competitors and, if there is, it is only temporary and limited.

Furthermore, such temporary and limited foreclosure, if any, is, as this Court said in *Tampa Electric Co.*, supra, l. c. 333, "conservatively speaking, quite insubstantial."

The Hearing Examiner found (R. 28) that Brown's sales through the Brown franchise plan "are less than 1 percent of all shoes sold in the United States." The Commission found (R. 68), that "The stores under the franchise plan constitute approximately one percent" of "the 70,000 re-



tailers classified as retail shoe outlets" rather than approximately seven tenths of one percent of "the 100,000 retail outlets in the country which sold shoes in 1958." There are no figures in the record as to the total sales of shoes in dollars in either the year ending October 31, 1959, or in any other year, except an estimate of "approximately 3½ billion dollars" in Brown's Petition for Review (R. 43), from which the market share of the commerce involved could have been otherwise determined by the Commission or can be determined by this Court.

As pointed out above, this Court has held that an exclusive dealing or requirements contract may not be held to come within the prohibition of Section 3 unless it is inherently anti-competitive, which the Brown plan is not, or unless there is evidentiary support for a finding that the effect may be substantially to lessen competition. This Court has held, in *Tampa Electric Company*, supra, l. c. 333, that a requirements contract, definitely preempting for a period of twenty years competition to the extent of purchases worth perhaps \$128,000,000, but only .77% of the total relevant market, did not fall within the proscription of Section 3, and that the proportionate volume of the relevant market preempted "is, conservatively speaking, quite insubstantial."

Similarly, in *FTC v. Motion Picture Adv. Co.*, supra, this Court approved a decision of the Commission condemning exclusive dealing contracts running for terms up to five years, the majority being for one or two years, covering 40% of the theaters in the area where respondent operated (respondent and three other companies having exclusive contracts with 75% of the market in the United States), but permitting such contracts for periods of up to one year.

Even if we assume that there are in effect written agreements in the form of Exhibit A to Brown's Answer (R. 12-

14) with every dealer on the Brown franchise plan, which there are not, and if we further assume that every such written agreement by its express terms requires every dealer to purchase 100% (not 75%) of his requirements from Brown, and if we further assume that such agreements are strictly enforced, which they are not, nevertheless the Brown franchise plan would not come within the proscription of Section 3 because, *inter alia*, the agreements, being terminable by the dealers at will whenever the dealer sees fit to do so, could not and would not operate to foreclose or preempt the market represented by such dealers. If a 100% requirements contract, binding upon both parties for a period of twenty years, affecting slightly less than 1% of the relevant market does not come within the proscription of Section 3 because the proportionate volume of the relevant market covered by the contract "is, conservatively speaking, quite insubstantial", then we respectfully submit that the Brown franchise plan, terminable at will by the dealer and by Brown upon thirty days' notice, affecting approximately 1% of the 70,000 shoe outlets in the country, could not have the effect of substantially lessening competition.

The Commission (Com. Br. p. 33) quotes from the footnote in *Brown Shoe Co.*, supra, that "the retailer was required, under this plan, to invest his own resources and develop his good will to a substantial extent in the case of Brown products." But, the fact is that every retailer of branded line shoes, whether manufactured by Brown or any other manufacturer, and whether or not on the Brown franchise plan, a similar plan of some other manufacturer, or not on any plan, must invest his own resources and develop his good will to a substantial extent in the sale of the brand of shoes he sells.

The Commission contends (Com. Br., pp. 31-33) that the number of retailers on the plan is increasing and "the

franchise program clearly appears as the growing edge of a continuous drive toward the foreclosure of retail outlets" and the Commission should therefore forestall the growth of such foreclosure. But since it has taken Brown some forty years to persuade approximately 1% of the retail shoe outlets to join and adhere to its program, the threat which the Commission fears would seem to be remote indeed.

### CONCLUSION.

We did not ask the Commission and do not ask this Court, as the Commission suggested (R. 69) "to promulgate a higher standard of illegality for proceedings under Section 5 of the Federal Trade Commission Act than for actions under the Clayton Act". But we do urge that where, as here, the Brown franchise plan involves nothing which by any stretch of the imagination could be deemed to be a "deceptive practice", nothing which is inherently anti-competitive, and nothing which could be deemed to be an "unfair" method of competition unless it can be said to come literally within the proscription of Section 3, then it must be judged by the same standards of illegality as those which would apply to a method of competition falling within the scope of Section 3, not lesser. The ultimate effect of the Commission's argument is that while the Brown franchise plan does not fall within the provisions of Section 3, it is the "type" of an arrangement proscribed by Section 3, and therefore, it was not necessary for the Commission to prove, and is not necessary for this Court to find, that the plan meets the tests of Section 3 in that the effect may be to substantially lessen competition.

Apparently what the Commission really seeks to accomplish in this case is to have this Court promulgate a rule to the effect that when the Commission, acting under Section 5, attacks as unfair a method of competition

which is not proscribed by the letter of Section 3, and is not inherently anticompetitive, but has only the characteristics of or is akin to a transaction proscribed by Section 3, then it is not necessary for the Commission to offer proof and make findings showing that the standards of illegality of Section 3 have been met; that under such circumstances all that is necessary for the Commission to do is to prove that it affects a not insubstantial portion of the relevant market and hence conclude that it constitutes a violation of Section 5. We respectfully submit that no such rule should be promulgated.

For the reasons set forth above, the judgment of the Court of Appeals should be affirmed.

Respectfully submitted,

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April, 1966.





# SUPREME COURT OF THE UNITED STATES

No. 118.—OCTOBER TERM, 1965.

Federal Trade Commission,	} On Writ of Certiorari to	
Petitioner,		the United States Court
v.		of Appeals for the Eighth
Brown Shoe Company, Inc.)	Circuit.	

[June 6, 1966.]

MR. JUSTICE BLACK delivered the opinion of the Court.

Section 5 (a) (6) of the Federal Trade Commission Act empowers and directs the Commission "to prevent persons, partnerships, or corporations . . . from using unfair methods of competition in commerce and unfair or deceptive acts or practices in commerce."<sup>1</sup> Proceeding under the authority of § 5, the Federal Trade Commission filed a complaint against the Brown Shoe Co., Inc., one of the world's largest manufacturers of shoes with total sales of \$236,946,078 for the year ending October 31, 1957. The unfair practices charged against Brown revolve around the "Brown Franchise Stores' Program" through which Brown sells its shoes to some 650 retail stores. The complaint alleged that under this plan Brown, a corporation engaged in interstate commerce, had "entered into contracts or franchises with a substantial number of its independent retail shoe store operator customers which require said customers to restrict their purchases of shoes for resale to the Brown lines and which prohibit them from purchasing, stocking or reselling shoes manufactured by competitors of Brown." Brown's customers who entered into these re-

<sup>1</sup> 58 Stat. 717, 719, as amended, 15 U. S. C. § 45 (a) (6) (1963 ed.).

Section 5 (a) (1) of the Federal Trade Commission Act provides that "Unfair methods of competition in commerce, and unfair or deceptive acts or practices in commerce, are declared unlawful."



strictive franchise agreements, so the complaint charged, were given in return special treatment and valuable benefits which were not granted to Brown's customers who did not enter into the agreements. In its answer to the Commission's complaint Brown admitted that approximately 259 of its retail customers had executed written franchise agreements and that over 400 others had entered into its franchise program without execution of the franchise agreement. Also in its answer Brown attached as an exhibit an unexecuted copy of the "Franchise Agreement" which, when executed by Brown's representative and a retail shoe dealer, obligates Brown to give to the dealer but not to other customers certain valuable services, including among others, architectural plans, costly merchandising records, services of a Brown field representative, and a right to participate in group insurance at lower rates than the dealer could obtain individually. In return, according to the franchise agreement set out in Brown's answer, the retailer must make this promise:

"In return I will:

"1. Concentrate my business within the grades and price lines of shoes representing Brown Shoe Company Franchises of the Brown Division and will have no lines conflicting with Brown Division Brands of the Brown Shoe Company."

Brown's answer further admitted that the operators of "such Brown Franchise Stores in individually varying degrees accept the benefits and perform the obligations contained in such franchise agreements or implicit in such Program," and that Brown refuses to grant these benefits "to dealers who are dropped or voluntarily withdraw from the Brown Franchise Program . . . ." The foregoing admissions of Brown as to the existence and operation of the franchise program were buttressed by

many separate detailed fact findings of a trial examiner, one of which findings was that the franchise program effectively foreclosed Brown's competitors from selling to a substantial number of retail shoe dealers.<sup>2</sup> Based on these findings and on Brown's admissions the Commission concluded that the restrictive contract program was an unfair method of competition within the meaning of § 5 and ordered Brown to cease and desist from its use.

On review the Court of Appeals set aside the Commission's order. In doing so the court said:

"By passage of the Federal Trade Commission Act, particularly § 5 thereof, we do not believe that Congress meant to prohibit or limit sales programs such as Brown Shoe engaged in in this case. . . . The custom of giving free service to those who will buy their shoes is widespread, and we cannot agree with the Commission that it is an unfair method of competition in commerce." 339 F. 2d 45, 56.

In addition the Court of Appeals held that there was a "complete failure to prove an exclusive dealing agreement which might be held violative of Section 5 of the Act." We are asked to treat this general conclusionary

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<sup>2</sup> In its opinion the Commission found that the services provided by Brown in its franchise program were the "prime motivation" for dealers to join and remain in the program; that the program resulted in franchised stores purchasing 75% of their total shoe requirements from Brown—the remainder being for the most part shoes which were not "conflicting" lines, as provided by the agreement; that the effect of the plan was to foreclose retail outlets to Brown's competitors, particularly small manufacturers; and that enforcement of the plan was effected by teams of field men who called upon the shoe stores, urged the elimination of other manufacturers' conflicting lines and reported deviations to Brown who then cancelled under a provision of the agreement. Compare *Brown Shoe Co. v. United States*, 370 U. S. 296.

statement as though the court intended it to be a rejection of the Commission's findings of fact. We cannot do this. Neither this statement of the court nor any other statement in the opinion indicate a purpose to hold that the evidence failed to show an agreement between Brown and more than 650 franchised dealers which restrained the dealers from buying competing lines of shoes from Brown's competitors. Indeed, in view of the crucial admissions in Brown's formal answer to the complaint we cannot attribute to the Court of Appeals a purpose to set aside the Commission's findings that these restrictive agreements existed and that Brown and most of the franchised dealers in varying degrees lived up to their obligations. Thus the question we have for decision is whether the Federal Trade Commission can declare it to be an unfair practice for Brown, the second largest manufacturer of shoes in the Nation, to pay a valuable consideration to hundreds of retail shoe purchasers in order to secure a contractual promise from them that they will deal primarily with Brown and will not purchase conflicting lines of shoes from Brown's competitors. We hold that the Commission has power to find, on the record here, such an anti-competitive practice unfair, subject of course to judicial review. See *Atlantic Rfg. Co. v. F. T. C.*, 381 U. S. 357, 367.

In holding that the Federal Trade Commission lacked the power to declare Brown's program to be unfair the Court of Appeals was much influenced by and quoted at length from this Court's opinion in *Federal Trade Comm'n v. Gratz*, 253 U. S. 421. That case, decided shortly after the Federal Trade Commission Act was passed, construed the Act over a strong dissent by Mr. Justice Brandeis as giving the Commission very little power to declare any trade practice unfair. Later cases of this Court, however, have rejected the *Gratz* view and it is now recognized in line with the dissent of

Mr. Justice Brandeis in *Gratz* that the Commission has broad powers to declare trade practices unfair.<sup>3</sup> This broad power of the Commission is particularly well established with regard to trade practices which conflict with the basic policies of the Sherman and Clayton Acts even though such practices may not actually violate these laws.<sup>4</sup> The record in this case shows beyond doubt that Brown, the country's second largest manufacturer of shoes, has a program, which requires shoe retailers, unless faithless to their contractual obligations with Brown, substantially to limit their trade with Brown's competitors. This program obviously conflicts with the central policy of both § 1 of the Sherman Act and § 3 of the Clayton Act against contracts which take away freedom of purchasers to buy in an open market.<sup>5</sup> Brown nevertheless contends that the Commission had no power to declare the franchise program unfair without proof that its effect "may be to substantially lessen competition or tend to create a monopoly"

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<sup>3</sup> See, e. g., *Federal Trade Commission v. R. F. Keppel & Bro., Inc.*, 291 U. S. 304, 310; *Trade Comm'n v. Cement Institute*, 333 U. S. 683, 693; *Atlantic Rfg. Co. v. F. T. C.*, 381 U. S. 357, 367.

<sup>4</sup> See, e. g., *Fashion Guild v. Trade Comm'n*, 312 U. S. 457, 463. *Atlantic Rfg. Co. v. F. T. C.*, 381 U. S. 357, 369.

<sup>5</sup> Section 1 of the Sherman Act, 26 Stat. 209, 15 U. S. C. § 1 (1963 ed.), declares illegal "Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States or with foreign nations . . . ."

Section 3 of the Clayton Act, 38 Stat. 730, 15 U. S. C. § 14 (1963 ed.), provides in relevant part:

"It shall be unlawful for any person engaged in commerce . . . to . . . make a . . . contract for sale of goods . . . for . . . resale within the United States . . . on the condition, agreement, or understanding that the . . . purchaser thereof shall not use or deal in the goods . . . of a competitor or competitors of the . . . seller, where the effect of such . . . condition, agreement, or understanding may be to substantially lessen competition or tend to create a monopoly in any line of commerce."

which of course would have to be proved if the Government were proceeding against Brown under § 3 of the Clayton Act rather than § 5 of the Federal Trade Commission Act. We reject the argument that proof of this § 3 element must be made for as we pointed out above our cases<sup>a</sup> hold that the Commission has power under § 5 to arrest trade restraints in their incipency without proof that they amount to an outright violation of § 3 of the Clayton Act or other provisions of the antitrust laws. This power of the Commission was emphatically stated in *F. T. C. v. Motion Picture Adv. Co.*, 344 U. S. 392, at pp. 394-395:

"It is . . . clear that the Federal Trade Commission Act was designed to supplement and bolster the Sherman Act and the Clayton Act . . . to stop in their incipency acts and practices which, when full blown, would violate those Acts . . . as well as to condemn as 'unfair methods of competition' existing violations of them."

We hold that the Commission acted well within its authority in declaring the Brown franchise program unfair whether it was completely full blown or not.

*Reversed.*

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<sup>a</sup> See cases cited in note 4, *supra*.

